

BX 5151 .B75 1875  
Brice, Seward, 1846-1914.  
The law relating to public  
worship





Digitized by the Internet Archive  
in 2015





## STEVENS AND HAYNES' PUBLICATIONS.

*Now ready, in one volume, 8vo, price 18s. cloth,*

### PRINCIPLES OF CONVEYANCING.

AN ELEMENTARY WORK FOR THE USE OF STUDENTS.

By HENRY C. DEANE, of Lincoln's Inn, Barrister-at-Law, Lecturer to the Incorporated Law Society of the United Kingdom.

"The whole work is very well and thoroughly done. We can heartily recommend it as a first book on the subject of which it treats."—*The Law.*

"We can confidently recommend Mr. Deane's work on the Principles of Conveyancing. It seems essentially the work for young Conveyancers."—*Irish Law Times.*

*Now ready, in one volume, 8vo, price 21s. cloth,*

### A NEW LAW DICTIONARY, And Institute of the whole Law;

EMBRACING FRENCH AND LATIN TERMS, AND REFERENCES TO THE AUTHORITIES, CASES, AND STATUTES. By ARCHIBALD BROWN, M.A. Edin. and Oxon., and B.C.L. Oxon., of the Middle Temple, Barrister-at-Law, Author of "The Law of Fixtures," "Analysis of Savigny's Obligations in Roman Law," &c.

"For the purposes of working law students nothing could be more useful."—*The Law.*

"It is a happy book to have at one's elbow."—*Saturday Review.*

*This day is published, in 8vo, price 10s. 6d. cloth,*

### INTRODUCTION TO THE STUDY OF INTERNATIONAL LAW.

Designed as an Aid in Teaching and in Historical Studies. By THEODORE D. WOOLSEY, lately President of Yale College. Fourth Edition, revised and enlarged.

*This day is published, Second Edition, 8vo, price 18s. cloth,*

### A TREATISE UPON THE LAW OF EXTRADITION,

With the Conventions upon the subject existing between England and Foreign Nations, and the cases decided thereon. By EDWARD CLARKE, of Lincoln's Inn, Barrister-at-Law and late Tancered Student.

"Mr. Clarke's accurate and sensible book is the best authority to which the English reader can turn upon the subject of extradition."—*Saturday Review.*

*In 8vo, Second Edition, price 21s. cloth,*

### MAYNE'S TREATISE ON DAMAGES.

Comprising their Measure, the Mode in which they are Assessed and Reviewed, the Practice of Granting New Trials, and the Law of Set-off. Second Edition, by LUMLEY SMITH, of the Inner Temple, Barrister-at-Law.

*Now ready, in one volume, 8vo, of nearly 1000 pages, price 42s. cloth,*

### A MAGISTERIAL AND POLICE GUIDE.

Being the Statute Law (including the Session of 1874) relating to the Jurisdiction and Duties of Magistrates and the Police Authorities, illustrated with Notes and References to Decided Cases. By H. C. GREENWOOD, Stipendiary Magistrate, Potteries District; and TEMPLE C. MARTIN, of the Southwark Police Court.

"We may say we have here our ideal law book. It may be said to omit nothing which it ought to contain."—*Law Times.*

*Now ready, Third Edition, in 8vo, price 20s. cloth,*

### THE PRINCIPLES OF EQUITY.

Intended for the Use of Students and the Profession. By EDMUND HENRY TURNER SNELL, of the Middle Temple, Barrister-at-Law. Third Edition, by JOHN R. GRIFFITH, of Lincoln's Inn, Barrister-at-Law.

"This Work has become a Standard Class-book in England, Ireland, India, & the Colonies.

"The second edition of this Treatise was noticed in this Review in October, 1872; the first edition had appeared in 1868. We are glad to see evidence of its growing popularity. As a second book in equity we are inclined to think it is the best which has been published. Mr. Snell's Treatise presents compactly, and (considering the size of the book) with remarkable comprehensiveness, the leading points on the various heads of Equity jurisdiction. Its selection of the most recent Cases is very valuable, for the student, and for the practitioner who desires a convenient *vide-mecum*, this book can be safely recommended."—*American Law Review*, January, 1875.





THE LAW RELATING TO PUBLIC WORSHIP.







THE  
LAW RELATING TO  
**Public Worship;**  
WITH ESPECIAL REGARD TO MATTERS OF  
**Ritual and Ornamentation,**  
AND  
TO THE MEANS FOR SECURING THE  
DUE OBSERVANCE THEREOF:

AND CONTAINING  
THE PUBLIC WORSHIP REGULATION ACT, 1874,  
THE CHURCH DISCIPLINE ACT,  
THE STATUTES OF UNIFORMITY,  
THE INJUNCTIONS AND ADVERTISEMENTS,  
THE ARTICLES AND CANONS,  
WITH NOTES AND REFERENCES.

BY  
SEWARD  BRICE, LL.D.

OF THE INNER TEMPLE, ESQ., BARRISTER-AT-LAW.

---

LONDON:  
STEVENS & HAYNES,  
Law Publishers,  
BELL YARD, TEMPLE BAR.

1875.

CHISWICK PRESS :—PRINTED BY WHITTINGHAM AND WILKINS,  
TOOKS COURT, CHANCERY LANE.



To

The Right Reverend

James Lord Bishop of Manchester

this Volume

is

by his Lordship's permission

Respectfully Dedicated

by

The Author.



## PREFACE.



THE object of this work is to contain a full exposition of the Law of Public Worship, in so far as it concerns the external forms and cultus enforced or merely permissible by the rules of the Church of England. Special prominence is given to those subjects—Ornaments, Ceremonial, and Vestments—which during the last thirty years have been continually increasing in importance, and which year after year have attracted a larger share of public attention. Such portions of the various Liturgies are set forth as will probably be sufficient to enable the reader to compare the existing Prayer Book with the earlier editions, and so to obtain a clear notion of the changes that have from time to time taken place in the Services of the National Church, and in the regulations for the due conduct and holding of them. In connection with this portion of the subject, I must tender to Mr. John Marriott Davenport, of Oxford, my sincere thanks for his kind remarks and criticism. Mr. Davenport has read the whole of the proof sheets, and has supplied, more particularly in Part I., many valuable corrections and suggestions. Here also I wish to acknowledge the great obligations I am under, in respect of Chapters iii., iv., and v. of Part I., to that very important work, “The Book of Common Prayer, with Notes,” by Dr. Stephens; and also to the Rev. Dr. Cardwell’s “Liturgies of Edward VI.”

Throughout I have endeavoured to state what, in accordance

with existing decisions, is the actual state of the law, not what some extreme partisans, ecclesiastical or lay, choose to think it ought to be.

The effort has been made to render the book complete for its purpose. Therefore, first, it contains in Part I. the Substantive Law relating to Public Worship. Next, in Part II., is set forth a succinct, and, it is hoped, sufficient statement of the means provided for enforcing a due observance of the Substantive, and for punishing breaches or omissions of, or other offences against it. In this Part will be found the text of the Public Worship Regulation Act, 1874, and the Church Discipline Act, with comments and annotations upon both Statutes, and an abstract of the cases decided under the latter Act.

Lastly, Part III. includes the most important Statutes and other enactments of statutory or quasi-statutory authority bearing upon Public Worship. In all cases the text is given *in extenso*, because many decisions and ecclesiastical disputes have turned upon sections and clauses now repealed. It was originally intended to insert in this Part several of the Visitation Articles of the Bishops during the sixteenth and seventeenth centuries, but such an addition would have greatly increased the bulk of the volume. Moreover, these articles can now be obtained in a very accessible form, being printed in the Appendices to the Reports of the Ritual Commissioners; and the enactments contained in Part III., chapter iii., comprise all which are of legal obligation.

My friend and former pupil, Mr. E. Marjoribanks, of the Inner Temple, has rendered very essential and willing assistance, by compiling the List of Cases, and preparing the very copious Index to this Book.

S. B.

TEMPLE,

March, 1875.



# TABLE OF CONTENTS.

## PART I.

### THE SUBSTANTIVE LAW.

|                                                                                    | Page |
|------------------------------------------------------------------------------------|------|
| CHAPTER I.—THE NATURE AND SOURCES OF ECCLESIASTICAL LAW                            | 1    |
| Sect. I. Introductory . . . . .                                                    | 1    |
| II. Statutes and Enactments of a Statutory nature .                                | 2    |
| III. The Anglican Canon Law . . . . .                                              | 3    |
| IV. The Ecclesiastical Common Law . . . . .                                        | 6    |
| V. Effect of Usage . . . . .                                                       | 10   |
| CHAPTER II.—GENERAL MATTERS RELATING TO THE CONDUCT<br>OF PUBLIC WORSHIP . . . . . | 13   |
| Sect. I. The Place for holding Public Worship . . . . .                            | 13   |
| Consecration and Reconsecration . . . . .                                          | 19   |
| Place of the Person conducting Public Worship .                                    | 24   |
| II. Time of holding Public Worship . . . . .                                       | 26   |
| III. Person by whom Public Worship is to be con-<br>ducted . . . . .               | 29   |
| Chaplains . . . . .                                                                | 33   |
| IV. General Conduct of Public Worship . . . . .                                    | 35   |
| CHAPTER III.—THE LITURGIES OF THE CHURCH OF ENGLAND .                              | 43   |
| Sect. I. Explication of Terms . . . . .                                            | 43   |
| II. History of the Liturgies . . . . .                                             | 47   |
| The First Prayer Book . . . . .                                                    | 56   |
| The Second Prayer Book . . . . .                                                   | 58   |
| The Prayer Book of 1559 . . . . .                                                  | 61   |
| Sect. III. The ordinary Services . . . . .                                         | 71   |

|                                                                                                                                                             | Page |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| CHAPTER III.—LITURGIES OF THE CHURCH OF ENGLAND ( <i>continued</i> ).                                                                                       |      |
| Sect. III. First—The Introductory Part of the Prayer Book                                                                                                   | 71   |
| Sealed Books                                                                                                                                                | 76   |
| Concerning the Service of the Church                                                                                                                        | 79   |
| Of Ceremonies, why some be abolished and<br>some retained                                                                                                   | 81   |
| Second—Morning Prayer                                                                                                                                       | 84   |
| Third—Evening Prayer                                                                                                                                        | 93   |
| Fourth—The shortened Forms of Service                                                                                                                       | 96   |
| The shortened order for Morning Prayer daily<br>throughout the Year, except on Sunday,<br>Christmas Day, Ash Wednesday, Good Fri-<br>day, and Ascension Day | 97   |
| The shortened order for Evening Prayer daily<br>throughout the Year, except on Sunday,<br>Christmas Day, Ash Wednesday, Good Fri-<br>day, and Ascension Day | 99   |
| Fifth—The Athanasian Creed                                                                                                                                  | 101  |
| Sixth—The Litany                                                                                                                                            | 103  |
| Seventh—The Communion Service                                                                                                                               | 104  |
| Eighth—The Sermon                                                                                                                                           | 106  |
| iv. The Remainder of the Book of Common Prayer                                                                                                              | 107  |
| CHAPTER IV.—RITES AND SACRAMENTS                                                                                                                            | 111  |
| Sect. I. Explication of Terms                                                                                                                               | 111  |
| II. The History of the Rites and Sacraments                                                                                                                 | 114  |
| III. The Communion Service                                                                                                                                  | 114  |
| iv. Other Rites and Sacraments                                                                                                                              | 131  |
| First—Baptism                                                                                                                                               | 131  |
| 1. Public Baptism of Infants                                                                                                                                | 133  |
| 2. Private Baptism of Infants                                                                                                                               | 140  |
| Sealed Books                                                                                                                                                | 143  |
| 3. The Baptism of such as are of Riper Years                                                                                                                | 144  |
| What is legal Baptism?                                                                                                                                      | 145  |
| Second—Confirmation                                                                                                                                         | 148  |
| Third—Solemnization of Matrimony                                                                                                                            | 150  |
| Fourth—The Order for the Visitation of the Sick                                                                                                             | 152  |
| Fifth—The Communion of the Sick                                                                                                                             | 154  |
| Sixth—Burial of the Dead                                                                                                                                    | 159  |
| Law relating to Burial                                                                                                                                      | 160  |
| Seventh—The Remaining Offices                                                                                                                               | 162  |

# Table of Contents.

xi

|                                                        | Page |
|--------------------------------------------------------|------|
| CHAPTER V.—CEREMONIAL . . . . .                        | 164  |
| Sect. I. Explication of the term Ceremony . . . . .    | 164  |
| II. The General Law relating to Ceremonial . . . . .   | 165  |
| III. Ceremonies connected with the Ordinary Services   | 170  |
| Processions . . . . .                                  | 170  |
| Ceremonial Use of Crosses, Crucifixes, and             |      |
| Images . . . . .                                       | 174  |
| Acts of Reverence . . . . .                            | 177  |
| Various other Ceremonies . . . . .                     | 184  |
| IV. Ceremonies specially connected with the Com-       |      |
| munion Service . . . . .                               | 187  |
| Elevation of the Elements . . . . .                    | 189  |
| Position of the Minister during the Communion          |      |
| Service . . . . .                                      | 194  |
| CHAPTER VI.—SUBSIDIARY MATTERS IN THE NATURE OF CERE-  |      |
| MONIES . . . . .                                       | 203  |
| CHAPTER VII.—VESTMENTS . . . . .                       | 206  |
| Sect. I. Explication of Terms . . . . .                | 206  |
| II. History of Vestments . . . . .                     | 208  |
| III. Vestments for the Holy Communion . . . . .        | 215  |
| IV. Vestments for the other Services . . . . .         | 215  |
| At the Communion . . . . .                             | 215  |
| Services other than the Communion . . . . .            | 216  |
| Comments on the Decisions as to Vestments . . . . .    | 217  |
| CHAPTER VIII.—ORNAMENTATION . . . . .                  | 220  |
| Sect. I. Definition of the Term . . . . .              | 220  |
| II. History of the Law Relating to Ornaments . . . . . | 222  |
| III. Ornamentation which is not specially connected    |      |
| with the Chancel . . . . .                             | 225  |
| Sub-sect. 1. Structural Ornamentation . . . . .        | 225  |
| Repairs . . . . .                                      | 225  |
| Seats in the Church . . . . .                          | 226  |
| Pulpit, Reading-desk, and Font . . . . .               | 226  |
| Monumental Erections . . . . .                         | 227  |
| Sub-sect. 2. Non-structural Ornamentation . . . . .    | 230  |
| Crosses . . . . .                                      | 230  |
| Crucifixes . . . . .                                   | 236  |
| Ornaments and Furniture directed by the Canons         | 237  |

|                                                      | Page |
|------------------------------------------------------|------|
| CHAPTER VIII.—ORNAMENTATION ( <i>continued</i> ).    |      |
| Sect. iv. Ornamentation specially connected with the |      |
| Holy Communion . . . . .                             | 240  |
| The Communion Table . . . . .                        | 241  |
| Credence Tables and Baldacchinos . . . . .           | 251  |
| Reredos . . . . .                                    | 254  |
| CHAPTER IX.—DECORATION AND OTHER SUBSIDIARY MATTERS  |      |
| OF ORNAMENTATION . . . . .                           | 256  |
| BELLS . . . . .                                      | 260  |
| ORGANS . . . . .                                     | 261  |
| CHAPTER X.—THE POSITION OF THE LAITY WITH REGARD TO  |      |
| THE CONDUCT OF PUBLIC WORSHIP . . . . .              | 265  |
| Rights and Privileges . . . . .                      | 266  |
| Duties of the Laity . . . . .                        | 270  |

## PART II.

### THE MEANS FOR SECURING THE DUE HOLDING AND CONDUCT OF PUBLIC WORSHIP.

|                                                              |     |
|--------------------------------------------------------------|-----|
| CHAPTER I.—ECCLESIASTICAL REMEDIES AND PUNISHMENTS . . . . . | 274 |
| Sect. i. General Notice . . . . .                            | 274 |
| ii. Penalties to which both Clergy and Laity are             |     |
| amenable . . . . .                                           | 275 |
| 1. Monition or Admonition . . . . .                          | 275 |
| 2. Penance . . . . .                                         | 276 |
| 3. Suspension <i>ab ingressu ecclesiæ</i> . . . . .          | 277 |
| 4. Excommunication . . . . .                                 | 278 |
| iii. Punishments limited to Clerical Offences . . . . .      | 280 |
| 5. Suspension either <i>ab officio</i> merely or <i>ab</i>   |     |
| <i>officio et a beneficio</i> . . . . .                      | 280 |
| 6. Sequestration . . . . .                                   | 283 |
| 7. Deprivation . . . . .                                     | 289 |
| 8. Degradation . . . . .                                     | 293 |
| iv. Anomalous Punishments . . . . .                          | 293 |
| 9. Faculties . . . . .                                       | 293 |
| 10. Contempt . . . . .                                       | 293 |
| 11. Costs . . . . .                                          | 297 |
| Criminal Suits . . . . .                                     | 298 |



# Table of Contents.

xiii

|                                                                                          | Page |
|------------------------------------------------------------------------------------------|------|
| CHAPTER II.—THE JURISDICTION OF THE ORDINARY . . . . .                                   | 300  |
| Sect. I. Who is the Ordinary? . . . . .                                                  | 300  |
| II. The Jurisdiction of the Ordinary in matters of<br>Ritual and Ornamentation . . . . . | 302  |
| III. The Jurisdiction of the Ordinary in other matters . . . . .                         | 305  |
| CHAPTER III.—FACULTIES . . . . .                                                         | 309  |
| Sect. I. Meaning of the Term . . . . .                                                   | 309  |
| II. Ordinary Faculties . . . . .                                                         | 309  |
| General Principles relating to the Grant . . . . .                                       | 310  |
| Purposes for which Faculties are granted . . . . .                                       | 312  |
| III. Confirmatory Faculties . . . . .                                                    | 316  |
| IV. Anomalous Faculties . . . . .                                                        | 319  |
| CHAPTER IV.—ORDINARY LEGAL PROCEEDINGS . . . . .                                         | 323  |
| Sect. I. Difference between Civil and Criminal Suits . . . . .                           | 323  |
| II. Civil Suits . . . . .                                                                | 326  |
| 1. Who may be Plaintiff . . . . .                                                        | 326  |
| 2. Commencement . . . . .                                                                | 327  |
| Citation or Decree . . . . .                                                             | 327  |
| Monition . . . . .                                                                       | 329  |
| Act on Petition . . . . .                                                                | 331  |
| 3. Pleadings . . . . .                                                                   | 332  |
| Libel . . . . .                                                                          | 332  |
| <i>Litis Contestatio</i> . . . . .                                                       | 335  |
| Pleas . . . . .                                                                          | 336  |
| 4. Answers . . . . .                                                                     | 337  |
| 5. Evidence . . . . .                                                                    | 339  |
| III. Criminal Suits . . . . .                                                            | 340  |
| The Promoter . . . . .                                                                   | 340  |
| General Nature of the Articles . . . . .                                                 | 342  |
| Pleading and Proof of the Charges Alleged . . . . .                                      | 344  |
| IV. Rules of the Court of Arches . . . . .                                               | 347  |
| CHAPTER V.—THE CHURCH DISCIPLINE ACT . . . . .                                           | 355  |
| Sect. I. General Notice of the Act . . . . .                                             | 355  |
| II. The Church Discipline Act . . . . .                                                  | 359  |
| CHAPTER VI.—THE PUBLIC WORSHIP REGULATION ACT, 1874 . . . . .                            | 382  |
| Sect. I. General Notice of the Act . . . . .                                             | 382  |
| II. The Public Worship Regulation Act, with Notes . . . . .                              | 388  |

|                                              | Page |
|----------------------------------------------|------|
| CHAPTER VII.—THE COURT OF FINAL APPEAL . . . | 417  |
| Sect. 1. Appeals previous to 1833 . . .      | 417  |
| II. The Privy Council . . .                  | 421  |
| III. The present Court of Appeal . . .       | 426  |

### PART III.

#### STATUTES AND OTHER AUTHORITATIVE ENACTMENTS RELATING TO PUBLIC WORSHIP.

|                                                                           |     |
|---------------------------------------------------------------------------|-----|
| CHAPTER I.—THE GENERAL STATUTES OF UNIFORMITY . . .                       | 429 |
| CHAPTER II.—SPECIAL STATUTES RELATING TO PUBLIC WORSHIP                   | 464 |
| CHAPTER III.—THE INJUNCTIONS AND ADVERTISEMENTS . . .                     | 477 |
| Injunctions of Edward VI. . . . .                                         | 477 |
| Injunctions of Elizabeth . . . . .                                        | 490 |
| Advertisements of Elizabeth . . . . .                                     | 506 |
| CHAPTER IV.—THE ARTICLES . . . . .                                        | 514 |
| CHAPTER V.—CONSTITUTIONS AND CANONS OF THE CHURCH OF<br>ENGLAND . . . . . | 543 |
| INDEX . . . . .                                                           | 599 |



## TABLE OF CASES.

|                                                                                                                                    | Page                         |
|------------------------------------------------------------------------------------------------------------------------------------|------------------------------|
|  DLAM <i>v.</i> COLTHURST, L. R. 2 Adm. & Eccl. 30 | 319                          |
| Albany <i>v.</i> Bishop of St. Asaph, Croke Eliz. 119                                                                              | 306                          |
| Arbuckle <i>v.</i> Cowtan, 3 Bos. & Pull. 321                                                                                      | 283                          |
| Armstrong <i>v.</i> Huddleston, 1 Moo. P. C. C. 486                                                                                | 298                          |
| Attorney-General <i>v.</i> Brereton, 2 Ves. Sen. 425, 427                                                                          | 14                           |
| Attorney-General <i>v.</i> Mayor of Bristol                                                                                        | 11                           |
| BAINES, <i>re</i> , 1 Cr. & Ph. 31                                                                                                 |                              |
| Baker <i>v.</i> Thorogood, 2 Curt. 632                                                                                             | 295                          |
| Bardin <i>v.</i> Calcott, 1 Hagg. Cons. 114                                                                                        | 268, 314, 318, 395           |
| Barlee <i>v.</i> Barlee, 1 Add. 301                                                                                                | 294                          |
| Barnes <i>v.</i> Shore, 1 Rob. 382, 8 Ad. & Ell. 640                                                                               | 17, 19                       |
| Bartlett <i>v.</i> Kirwood, 2 E. & B. 771                                                                                          | 285                          |
| Barton <i>v.</i> Field, 4 Moo. P. C. C. 273                                                                                        | 296                          |
| „ <i>v.</i> Wells, 1 Hagg. Cons. 34                                                                                                | 299                          |
| Battiscombe <i>v.</i> Eve, 9 Jur. (N. S.) 210; 7 L. T. (N. S.) 697                                                                 | 14, 20                       |
| Beal <i>v.</i> Liddell, Moo. Spec. Rep. 188                                                                                        | 118, 234, 245, 251           |
| (See also Liddell <i>v.</i> Beal, Westerton <i>v.</i> Liddell, Liddell <i>v.</i> Westerton.)                                       |                              |
| Beckwith <i>v.</i> Harding, 1 B. & Ald. 508                                                                                        | 228                          |
| Bennett <i>v.</i> Bonaker, 2 Hagg. Eccl. 25                                                                                        | 28, 141, 298, 342, 343       |
| Best <i>v.</i> Best, 2 Phill. 161                                                                                                  | 338                          |
| Blackmore <i>v.</i> Brider, 2 Phill. 359                                                                                           | 277                          |
| Blake <i>v.</i> Osborne, 3 Hagg. Eccl. 726                                                                                         | 268                          |
| Bluck <i>v.</i> Hodgson, 5 Notes of Cases, 167                                                                                     | 284                          |
| „ <i>v.</i> Rackham, 5 Moo. P. C. C. 305                                                                                           | 323                          |
| Blunt (case of Rev. W.), 2 Steph. "Eccl. Stat." 2046                                                                               | 218                          |
| Bonwell <i>v.</i> Bishop of London, 14 Moo. P. C. C. 325                                                                           | 291, 292, 359, 364           |
| Bosanquet <i>v.</i> Heath, 9 W. R. 35                                                                                              | 17, 268                      |
| Breeks <i>v.</i> Woolfrey, 1 Curt. 880                                                                                             | 203, 229, 230, 259, 314, 343 |
| Bridgwater <i>v.</i> Crutchley, 1 Add. 480                                                                                         | 299                          |
| Bright <i>v.</i> Hutton, 3 H. L. Cas. 341                                                                                          | 425                          |
| Brooks <i>v.</i> Cresswell, 4 Notes of Cases, 429                                                                                  | 363, 365, 371, 376           |

|                                                                                                                                  | Page               |
|----------------------------------------------------------------------------------------------------------------------------------|--------------------|
| Bunter <i>v.</i> Cresswell, 14 Q. B. 285, 3 Jur. 864 . . . . .                                                                   | 281, 284, 285      |
| Burch <i>v.</i> Reid, L. R. 4 Adm. & Eccl. 112 . . . . .                                                                         | 407                |
| Burder <i>v.</i> Hodgson, 4 Notes of Cases, 492 . . . . .                                                                        | 298, 362           |
| „ <i>v.</i> H——, 4 Notes of Cases, 482 . . . . .                                                                                 | 363                |
| „ <i>v.</i> Langley, 1 Notes of Cases, 542 . . . . .                                                                             | 363                |
| „ <i>v.</i> O'Neil, 9 Jur. (N. S.) 1109 . . . . .                                                                                | 340                |
| „ <i>v.</i> Speer, 1 Notes of Cases, 39 . . . . .                                                                                | 363                |
| „ <i>v.</i> Pughe, 1 Jur. (N. S.) 1175 . . . . .                                                                                 | 363                |
| Burgoyne <i>v.</i> Free, 2 Hagg. Eccl. 456 . . . . .                                                                             | 292, 298           |
| Burnell <i>v.</i> Jenkins, 2 Phill. 391 . . . . .                                                                                | 297                |
| Burton <i>v.</i> Hewson, 10 M. & W. 105 . . . . .                                                                                | 269                |
| Butt <i>v.</i> Jones, 2 Hagg. Eccl. 417 . . . . .                                                                                | 311, 312           |
| CAMPBELL <i>v.</i> Parishioners of Paddington, 2 Rob. Eccl. 558 . . . . .                                                        | 310, 314           |
| Cardinall <i>v.</i> Molyneux, 4 D. G. F. & J. 117 . . . . .                                                                      | 314, 318           |
| Carr <i>v.</i> Marsh, 2 Phill. 198 . . . . .                                                                                     | 17, 30, 228        |
| Carter <i>v.</i> Carter, Prerog. Crt. H. T. 1840 . . . . .                                                                       | 337                |
| Caudrey's Case, 5 Rep. 1, 8 . . . . .                                                                                            | 61                 |
| Churchwardens of St. John's, Margate, <i>v.</i> Parishioners, Vicar, and<br>inhabitants of the same, 1 Hagg. Cons. 198 . . . . . | 263                |
| Clarke <i>v.</i> Heathcote, 4 Notes of Cases, 321 . . . . .                                                                      | 298, 362, 363      |
| Clayton <i>v.</i> Dean, 7 Notes of Cases, 46 . . . . .                                                                           | 23                 |
| Clinton <i>v.</i> Hatchard, 1 Add. 96 . . . . .                                                                                  | 277, 278           |
| Clutton <i>v.</i> Cherry, 2 Phill. 385 . . . . .                                                                                 | 337                |
| Coates <i>v.</i> Brown, 1 Add. 351 . . . . .                                                                                     | 276, 299           |
| Constable & Bailey <i>v.</i> Tuffnell & Mason, 4 Hagg. Eccl. 508 . . . . .                                                       | 298                |
| Conway <i>v.</i> Beazeley, 3 Hagg. Eccl. 651 . . . . .                                                                           | 339                |
| Cooper <i>v.</i> Dodd, 2 Rob. Eccl. 270 . . . . .                                                                                | 379                |
| Coppin <i>v.</i> Dillon, 4 Hagg. Eccl. 375 . . . . .                                                                             | 298                |
| Courtail <i>v.</i> Homfray, 2 Hagg. Eccl. 1 . . . . .                                                                            | 277                |
| Cox <i>v.</i> Goodday, 2 Hagg. Cons. 138 . . . . .                                                                               | 277                |
| Craig <i>v.</i> Farnall, 6 Moo. P. C. C. 446 . . . . .                                                                           | 408                |
| Croft <i>v.</i> Croft, 3 Hagg. Eccl. 310 . . . . .                                                                               | 332                |
| Crofts <i>v.</i> Middleton, 2 Atk. 650, 2 Str. 1056 . . . . .                                                                    | 6                  |
| D'AGUILAR <i>v.</i> D'Aguilar, 1 Hagg. Eccl. 773 . . . . .                                                                       | 297                |
| Daunt <i>v.</i> Crocker, L. R. 2 Adm. & Eccl. 41 ; 37 L. J. Eccl. 1 . . . . .                                                    | 261, 335           |
| Denison (ex parte), 4 E. & B. 292 ; 24 L. J. Q. B. 34 . . . . .                                                                  | 378, 379           |
| Dewdney <i>v.</i> Good & Ford, 7 Jur. (N. S.) 673 . . . . .                                                                      | 267, 314, 316      |
| Dicks <i>v.</i> Huddesford, 1 Phill. 278 . . . . .                                                                               | 282                |
| Ditcher <i>v.</i> Denison, 11 Moo. P. C. C. 324 . . . . .                                                                        | 376                |
| Doe dem. Richardson <i>v.</i> Thomas, 9 Ad. & Ell. 556 . . . . .                                                                 | 15                 |
| Down & Connor (Bishop of) <i>v.</i> Miller, 11 Ir. Ch. App. 1 ; 5 L. T.<br>(N. S.) 30 . . . . .                                  | 30                 |
| Dysart <i>v.</i> Dysart, 2 Notes of Cases, 16 . . . . .                                                                          | 331, 332, 337, 338 |



# Table of Cases.

xvii

|                                                                                     | Page                                                                                                          |
|-------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| ELPHINSTONE <i>v.</i> Purchas, L. R. 3 Adm. & Eccl. 66                              | 12, 17, 28, 66,<br>75, 117, 118, 171, 174, 176, 184, 185, 186, 188, 189, 192, 193, 195,<br>196, 202, 257, 365 |
| Escott <i>v.</i> Mastin, 4 Moo. P. C. C. 692                                        | 146, 408. See Mastin <i>v.</i><br>Escott.                                                                     |
| Evan <i>v.</i> Elack, 38 L. J. Eccl. 38                                             | 313                                                                                                           |
| Evans <i>v.</i> Evans, 1 Rob. Eccl. 173                                             | 339                                                                                                           |
| „ <i>v.</i> Knight & Moore, 3 Phill. 418                                            | 333                                                                                                           |
| „ <i>v.</i> Owen Godbolt, 432                                                       | 6                                                                                                             |
| Exeter (Bishop of) <i>v.</i> Marshall, L. R. 3 H. L. 17                             | 6, 306                                                                                                        |
| FAGG <i>v.</i> Lee, L. R. 4 Adm. & Eccl. 135                                        | 259, 326, 327, 330                                                                                            |
| Farnall <i>v.</i> Craig, 5 Notes of Cases, 557                                      | 363, 369                                                                                                      |
| Faulkner <i>v.</i> Litchfield & Stearne, 1 Rob. Eccl. 184; 3 Notes of<br>Cases, 537 | 119, 241, 246, 247, 251, 313, 318                                                                             |
| Fell <i>v.</i> Bond, 1 Rob. Eccl. 740                                               | 406                                                                                                           |
| Fielding <i>v.</i> Standen and others, 2 Curt. 663                                  | 276                                                                                                           |
| Flamank <i>v.</i> Simpson, L. R. 1 Adm. & Eccl. 276, 278                            | 36, 189, 202,<br>366, 371, 372, 376                                                                           |
| Foster <i>v.</i> Foster, 1 Add. 469                                                 | 299                                                                                                           |
| Freeland <i>v.</i> Neale, 1 Rob. Eccl. 643, 12 Jur. 635                             | 19                                                                                                            |
| Fuller <i>v.</i> Lane, 2 Add. 419                                                   | 268, 312, 313                                                                                                 |
| GILBERT <i>v.</i> Buzzard & Boyer, 2 Hagg. Cons. 333                                | 160, 162                                                                                                      |
| Goodhall & Gray <i>v.</i> Whitmore & Fenn, 2 Hagg. Eccl. 374                        | 298                                                                                                           |
| Goreham's Case, Moo. Spec. Rep. 462                                                 | 344                                                                                                           |
| Greenhill <i>v.</i> Greenhill, 1 Curt. 462                                          | 276                                                                                                           |
| Greenslade <i>v.</i> Derby, L. R. 3 Q. B. 421                                       | 15                                                                                                            |
| Griffiths <i>v.</i> Reed & Harry, 1 Hagg. Eccl. 210                                 | 298                                                                                                           |
| Groves & Wright <i>v.</i> Rector of Hornsey, 1 Hagg. Cons. 505                      | 298,<br>299, 311, 313                                                                                         |
| HALLACK <i>v.</i> University of Cambridge, 1 Q. B. 593                              | 396                                                                                                           |
| Hamerton <i>v.</i> Hamerton, 1 Hagg. 23                                             | 276, 294                                                                                                      |
| Harris & Wiggins <i>v.</i> Milburn, 2 Hagg. Eccl. 62                                | 299                                                                                                           |
| Harrison <i>v.</i> Forbes & Sisson, 6 Jur. (N. S.) 1353                             | 261                                                                                                           |
| Harper <i>v.</i> Forbes, 5 Jur. (N. S.) 275                                         | 310                                                                                                           |
| Head <i>v.</i> Sanders, 2 Curt. 32; 4 Moo. P. C. C. 186                             | 372                                                                                                           |
| Hebbert <i>v.</i> Purchas, L. R. 3 P. C. 66                                         | 9, 11, 86, 118, 169, 193, 196,<br>214, 216, 281, 282, 284, 297, 410, 425, 605                                 |
| Henshaw & Hadfield <i>v.</i> Atkinson, 1 Lee, 239                                   | 421                                                                                                           |
| Herbert <i>v.</i> Dean and Chapter of Westminster, 1 P. Wms. 773                    | 16                                                                                                            |
| Hereford (Bishop of) <i>v.</i> T——, 2 Rob. Eccl. 595                                | 376                                                                                                           |
| Hitchins <i>v.</i> Wood, 2 Moo. P. C. C. 355                                        | 333                                                                                                           |
| Hodgson <i>v.</i> Dillon, 2 Curt. 388                                               | 17, 30                                                                                                        |

|                                                                                              | Page                    |
|----------------------------------------------------------------------------------------------|-------------------------|
| Homer & Bloomer <i>v.</i> Jones, 9 Jur. 167 . . . . .                                        | 359, 366                |
| Hopkins <i>v.</i> Clarke, 5 B. & S. 753 . . . . .                                            | 284                     |
| Hopper <i>v.</i> Davis, 1 Lee, 648 . . . . .                                                 | 314, 326                |
| Hopton <i>v.</i> Minister & Churchwardens of Kemerton, 5 Notes of Cases, 74 . . . . .        | 318, 396                |
| Huble <i>v.</i> Clark, 1 Hagg. Eccl. 129 . . . . .                                           | 298                     |
| Hussey <i>v.</i> Radcliffe, 5 Jur. (N. S.), 1014 . . . . .                                   | 293, 362, 363           |
| Hutchins <i>v.</i> Denziloe & Loveland, 1 Hagg. Cons. 170, 175-9 . . . . .                   | 38, 264, 319            |
| JACKSON <i>v.</i> Singer & Carson, 37 L. J. Eccl. 9 . . . . .                                | 227                     |
| Jarman <i>v.</i> Bagster, 3 Hagg. Eccl. 356 . . . . .                                        | 343                     |
| Jarratt <i>v.</i> Steele, 3 Phill. 170 . . . . .                                             | 313                     |
| Jay <i>v.</i> Webber, 3 Hagg. Eccl. 4 . . . . .                                              | 262, 264, 313, 317      |
| Jenkinson <i>v.</i> Thomas, 4 T. R. 665 . . . . .                                            | 15                      |
| Jones <i>v.</i> Ellis, 2 Y. & J. 265 . . . . .                                               | 15                      |
| „ <i>v.</i> Jelf, 8 L. T. (N. S.) 399 . . . . .                                              | 30                      |
| KEMP <i>v.</i> Wickes, 3 Phil. 264 . . . . .                                                 | 145, 160, 278           |
| King <i>v.</i> Archbishop of Canterbury & Bishop of London, 15 East. 117 . . . . .           | 306, 307                |
| Kitson <i>v.</i> Jury, 11 Jur. (N. S.) 272 . . . . .                                         | 19                      |
| „ <i>v.</i> Loftus, 4 Notes of Cases, 323 . . . . .                                          | 293, 364                |
| Knapp <i>v.</i> Parishioners of Willesden, 2 Rob. Eccl. 358 . . . . .                        | 313                     |
| LAGDEN <i>v.</i> Robinson & Green, 1 Hagg. Cons. 505 . . . . .                               | 298                     |
| Lait <i>v.</i> Bailey, 2 Rob. Eccl. 150 . . . . .                                            | 327                     |
| Langmead <i>v.</i> Lewis, 2 Phill. 325 . . . . .                                             | 276                     |
| Laura (The), 1 Moo. P. C. C. (N. S.) 181 . . . . .                                           | 408                     |
| Lawson <i>v.</i> Carr, 10 Moo. P. C. C. 162 . . . . .                                        | 408                     |
| Lechmere Charlton's Case, 2 My. & Cr. 316 . . . . .                                          | 294                     |
| Lee <i>v.</i> Matthews, 3 Hagg. Eccl. 173 . . . . .                                          | 267, 277, 278, 334, 343 |
| Liddell <i>v.</i> Beal, 14 Moo. P. C. C. 7 . . . . .                                         | 236, 247, 248, 250      |
| (See also Beal <i>v.</i> Liddell, Westerton <i>v.</i> Liddell, Liddell <i>v.</i> Westerton.) |                         |
| Liddell <i>v.</i> Rainsford, 38 L. J. Eccl. 15 . . . . .                                     | 17, 326                 |
| „ <i>v.</i> Westerton, Moo. Spec. Rep. 156 . . . . .                                         | 220                     |
| Lincoln (Bishop of) <i>v.</i> Day, 4 Notes of Cases, 299 . . . . .                           | 363, 370                |
| Line <i>v.</i> Harris, 1 Lee, 146, 155 . . . . .                                             | 15                      |
| Lock <i>v.</i> Denner, 1 Add. 356 . . . . .                                                  | 333                     |
| London (Bishop of) <i>v.</i> Day, 1 Rob. Eccl. 724 . . . . .                                 | 281, 368                |
| Lovekin <i>v.</i> Edward, 1 Phill. 179 . . . . .                                             | 327                     |
| MAGNARD <i>v.</i> Brand, 3 Phill. 501 . . . . .                                              | 276                     |
| Magnay <i>v.</i> Vicar, &c., of St. Michael, 1 Hagg. Eccl. 48 . . . . .                      | 311, 314                |

# Table of Cases.

xix

|                                                                          | Page                                                                                          |
|--------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| Maidman <i>v.</i> Malpas, 1 Hagg. Cons. 205 . . . . .                    | 160, 228, 313, 314, 341                                                                       |
| Martin <i>v.</i> Mackonochie, L. R. 2 Adm. & Eccl. 116 . . . . .         | 5, 8, 49, 53, 177, 188, 189, 190, 302, 340, 347                                               |
| „ <i>v.</i> Mackonochie, L. R. 2 P. C. 365 . . . . .                     | 11, 35, 52, 53, 86, 166, 180, 183, 188, 220, 221, 256, 257, 282, 297, 303, 340, 371, 374, 410 |
| Marsh <i>v.</i> Tyrrell & Harding, 2 Hagg. Eccl. 133 . . . . .           | 333                                                                                           |
| Mason <i>v.</i> Lambert, 12 Q. B. 795 . . . . .                          | 15                                                                                            |
| Mastin <i>v.</i> Escott, 2 Curt. 692, 4 Moo. P. C. C. 104 . . . . .      | 279                                                                                           |
| Millar & Symes <i>v.</i> Kilby & Palmer, 1 Curt. 540 . . . . .           | 272, 276                                                                                      |
| Molyneux <i>v.</i> Bagshaw, 9 Jur. (N. S.) 533 . . . . .                 | 30, 33, 325                                                                                   |
| Monckton, <i>re</i> , 3 Notes of Cases, Suppl. lv. . . . .               | 363                                                                                           |
| Moorsom <i>v.</i> Moorsom, 3 Hagg. Eccl. 87 . . . . .                    | 334                                                                                           |
| Morgan <i>v.</i> Hopkins, 2 Phill. 582 . . . . .                         | 338                                                                                           |
| Morris <i>v.</i> Ogden, L. R. 4 C. P. 687 . . . . .                      | 281, 366                                                                                      |
| Morse <i>v.</i> Morse, 5 Notes of Cases, 49 . . . . .                    | 277, 284                                                                                      |
| Mortimer <i>v.</i> Freeman, 1 Brownlow & Gold. 70 . . . . .              | 291                                                                                           |
| Moss <i>v.</i> Edwards, 37 L. J. Eccl. 89 . . . . .                      | 363                                                                                           |
| Mouncey <i>v.</i> Robinson, 37 L. J. Eccl. 8 . . . . .                   | 368, 391                                                                                      |
| Moycey <i>v.</i> Hillcoat, 2 Hagg. Eccl. 50 . . . . .                    | 17                                                                                            |
| NEWBERY <i>v.</i> Goodwin, 1 Phill. 282 . . . . .                        | 36                                                                                            |
| Noble <i>v.</i> Voysey, L. R. 3 P. C. 357 . . . . .                      | 290, 371                                                                                      |
| Norwich (Bishop of) <i>v.</i> Pearse, L. R. 2 Adm. & Eccl. 281 . . . . . | 293, 298, 337, 340, 342, 362, 363, 374                                                        |
| „ <i>v.</i> Berney, 36 L. J. Eccl. 8 . . . . .                           | 340, 363, 375                                                                                 |
| OLIVER & Peake <i>v.</i> Heathcote, 2 Add. 35 . . . . .                  | 337, 338                                                                                      |
| „ <i>v.</i> Toll & Hobart, 1 Hagg. Eccl. 43 . . . . .                    | 343                                                                                           |
| PALMER <i>v.</i> Tijou, 2 Add. 203 . . . . .                             | 299                                                                                           |
| „ <i>v.</i> Bishop of Exeter, 1 Str. 576 . . . . .                       | 228                                                                                           |
| Parham <i>v.</i> Templar, 3 Phill. 515 . . . . .                         | 269, 301, 324                                                                                 |
| Parker <i>v.</i> Leach, 1 L. R. 1 P. C. 312 . . . . .                    | 21, 22, 313, 396                                                                              |
| „ <i>v.</i> Leach, 4 Moo. P. C. C. (N. S.) 199 . . . . .                 | 168                                                                                           |
| Parks Smith, <i>re</i> , Steph. "Laws of Clergy," 1083 . . . . .         | 231, 259                                                                                      |
| Partington <i>v.</i> Rector of Barnes, 2 Lee, 345 . . . . .              | 312, 313                                                                                      |
| Patch <i>v.</i> Horlock, 11 Jur. 369 . . . . .                           | 298                                                                                           |
| Pearce & Hughes <i>v.</i> Rector of Clapham, 3 Hagg. Eccl. 10 . . . . .  | 261, 262, 313                                                                                 |
| Philpotts <i>v.</i> Boyd, "Times," Aug. 7, 1874; Feb. 26, 1875 . . . . . | 254, 301, 412                                                                                 |
| Pitcher <i>v.</i> Vicar, &c., of Northfleet, 3 Add. 15 . . . . .         | 311                                                                                           |
| Poole <i>v.</i> Bishop of London, 7 Jur. (N. S.) 347 . . . . .           | 421                                                                                           |
| Portland (Duke of) <i>v.</i> Bingham, 1 Hagg. Cons. 157 . . . . .        | 30, 325                                                                                       |
| Pricket's Case, Cro. Jac. 366 . . . . .                                  | 259                                                                                           |

|                                                                        | Page                                        |
|------------------------------------------------------------------------|---------------------------------------------|
| RAJUNDANARAIN RAE <i>v.</i> Bijai Govind Sing, 1 Moo. P. C. 117        | 425                                         |
| Randall & Horden, <i>v.</i> Collins & Ludlow, 2 Lee, 217               | 263, 313                                    |
| Rector, &c., of St. John's, Walbrook, <i>v.</i> Parishioners, 2 Rob.   |                                             |
| Eccl. 515                                                              | 310, 314                                    |
| Redhead <i>v.</i> Wait, 6 L. T. (N. S.) 580                            | 261                                         |
| Reg. <i>v.</i> Archbishop of Canterbury, 6 E. & B. 546, 25 L. J. Q. B. |                                             |
| 346                                                                    | 379                                         |
| „ <i>v.</i> Archbishop of York, 2 Q. B. 2; 2 G. & D. 202; 6 Jur. 412   | 378                                         |
| „ <i>v.</i> Baines, 12 Add. & Ell. 210                                 | 295, 296, 329                               |
| „ <i>v.</i> Bishop of Chichester, 2 E. & E. 209                        | 326, 364                                    |
| „ <i>v.</i> Castro (Onslow & Whalley's case), L. R. 9 Q. B. 217        | 294                                         |
| „ <i>v.</i> Jones, 12 Add. & Ell. 183                                  | 295                                         |
| „ <i>v.</i> Judge of the Court of Arches, 7 E. & B. 315; 26 L. J.      |                                             |
| Q. B. 178                                                              | 373, 379                                    |
| „ <i>v.</i> Mills, 10 Cl. & F. 534, 671-678, 745                       | 7                                           |
| Reynolds <i>v.</i> Monckton, 2 Moo. & Rob. 384                         | 268                                         |
| Rich <i>v.</i> Bushnell, 4 Hagg. Eccl. 164                             | 162, 228, 229, 313, 314                     |
| Richardson <i>v.</i> Richardson, 1 Hagg. Eccl. 6                       | 332                                         |
| „ (Doe dem.) <i>v.</i> Thomas, 9 Ad. & Ell. 556                        | 15                                          |
| Rippin <i>v.</i> Wilson & Bastin, 2 Adm. & Eccl. 386                   | 391                                         |
| Ritchings <i>v.</i> Cordingley, L. R. 3 Adm. & Eccl. 113               | 267, 314, 315                               |
| Robins <i>v.</i> Wolesey, 1 Lee, 616                                   | 337                                         |
| Robinson (in the goods of), 3 Phill. 511                               | 329                                         |
| Rose ( <i>ex parte</i> ), 15 Q. B. 751                                 | 368                                         |
| Rosher <i>v.</i> Rector, &c., of Northfleet, 3 Add. 14                 | 311, 314                                    |
| Rugg <i>v.</i> Bishop of Winchester, L. R. 2 P. C. 223                 | 364                                         |
| „ <i>v.</i> Kingsmill, L. R. 2 P. C. 59, 63                            | 24, 32, 310, 311, 312, 313, 314, 391        |
| SANDARS <i>v.</i> Head, 3 Curt. 565, 583                               | 8, 334, 365, 371                            |
| Saph <i>v.</i> Atkinson, 1 Add. 162                                    | 339                                         |
| Saul <i>v.</i> Wilson, 2 Vern. 118                                     | 421                                         |
| Saunders <i>v.</i> Saunders, 11 Jur. 758                               | 332, 337                                    |
| Schultes <i>v.</i> Hodgson, 1 Add. 105                                 | 337, 343                                    |
| Scindia (The), 4 Moo. P. C. (N. S.) 84                                 | 408                                         |
| Seager <i>v.</i> Bowle, 1 Add. 541                                     | 228, 313                                    |
| Sedgwick <i>v.</i> Bishop of Manchester, 38 L. J. Eccl. 30             | 30, 307                                     |
| Sergeaunt <i>v.</i> Sergeaunt, 1 Curt. 1                               | 340                                         |
| Sharpe <i>v.</i> Hansard, 3 Hagg. Eccl. 336                            | 229, 314                                    |
| Sheppard <i>v.</i> Bennett, Second Appeal, L. R. 4 P. C. 371           | 113, 119, 182, 334, 344, 366, 367, 371      |
| „ <i>v.</i> Phillimore & Bennett, L. R. 2 P. C. 450                    | 371, 403                                    |
| Sherwood <i>v.</i> Ray, 1 Moo. P. C. C. 353                            | 365                                         |
| Sieveking <i>v.</i> Evans & Kingsford, 36 L. J. Eccl. 1                | 248, 251, 252, 293, 311, 313, 317, 318, 397 |



# Table of Cases.

xxi

|                                                                    | Page                                                                                                                              |
|--------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| Simmons v. Simmons, 5 Notes of Cases, 347 . . . . .                | 389                                                                                                                               |
| Singapore (The), L. R. 1 P. C. 378 . . . . .                       | 425                                                                                                                               |
| Smith v. Justices of Sierra Leone, 2 Moo. P. C. C. 361 . . . . .   | 408                                                                                                                               |
| „ v. Lovegrove, 2 Lee, 162 . . . . .                               | 30                                                                                                                                |
| „ & Willis v. Dixon, 2 Curt. 270 . . . . .                         | 261                                                                                                                               |
| Specot's Case, 5 Rep. 24 . . . . .                                 | 290                                                                                                                               |
| Speer v. Burder, 3 Moo. P. C. C. 166 . . . . .                     | 343                                                                                                                               |
| Spry v. Hood, 2 Curt. 357 . . . . .                                | 268                                                                                                                               |
| St. David's (Bishop of) v. De Rutzen, 7 Jur. (N. S.) 884 . . . . . | 314                                                                                                                               |
| Starkey v. Churchwardens of Watlington, 2 Salk. 547 . . . . .      | 314                                                                                                                               |
| Steeven v. Rector of St. Martin Orgars, 2 Add. 255 . . . . .       | 313                                                                                                                               |
| Stevenson v. Higginson, 3 H. L. Cas. 638 . . . . .                 | 406                                                                                                                               |
| Steward v. Francis, 3 Curt. 213 . . . . .                          | 395                                                                                                                               |
| Stocks v. Booth, 1 T. R. 428 . . . . .                             | 268                                                                                                                               |
| Sullivan v. Sullivan, 2 Hagg. Cons. 253 . . . . .                  | 338                                                                                                                               |
| Sumner v. Wix, L. R. 3 Adm. & Eccl. 58 . . . . .                   | 188                                                                                                                               |
| Swift v. Swift, 4 Hagg. Eccl. 139 . . . . .                        | 332, 337                                                                                                                          |
| TATTERSALL v. Knight, 1 Phill. 232 . . . . .                       | 269, 299, 313                                                                                                                     |
| Taylor v. Morley, 1 Curt. 485 . . . . .                            | 277, 278, 343                                                                                                                     |
| Thakeham Sequestration Moneys, re, L. R. 12 Eq. 494 . . . . .      | 281                                                                                                                               |
| Theakston v. Marson, 4 Hagg. Eccl. 314 . . . . .                   | 339, 340                                                                                                                          |
| Thomas v. Hughes & Morris, 1 Add. 470 . . . . .                    | 313                                                                                                                               |
| Titchmarsh v. Chapman, 3 Curt. 840 . . . . .                       | 147, 162, 279                                                                                                                     |
| Trover v. Hurst, 5 Notes of Cases, 165 . . . . .                   | 364                                                                                                                               |
| Turner v. Meyers, 1 Hagg. Cons. 415 . . . . .                      | 327                                                                                                                               |
| „ v. Parishioners of Hanwell, 1 Notes of Cases, 368 . . . . .      | 14, 20, 313,<br>314                                                                                                               |
| VELEY v. Burder, 12 Ad. & Ell. 233 . . . . .                       | 225, 395                                                                                                                          |
| Vicar of Tottenham v. Venn, L. R. 4 Adm. & Eccl. 221 . . . . .     | 226                                                                                                                               |
| Ville de Varvoise, 2 Dodson Adm. 184 . . . . .                     | 331                                                                                                                               |
| Voysey v. Noble, L. R. 3 P. C. 357 . . . . .                       | 407, 408, 426                                                                                                                     |
| WALTER v. Montague, 1 Curt. 253 . . . . .                          | 272                                                                                                                               |
| „ v. Gunner & Drury, 1 Hagg. Cons. 321 . . . . .                   | 313                                                                                                                               |
| Warner v. Gater, 2 Curt. 315 . . . . .                             | 20, 313                                                                                                                           |
| Watney v. Lambert & Simpson, 4 Hagg. Eccl. 84 . . . . .            | 272, 333                                                                                                                          |
| Watson v. Colby, 6 Moo. P. C. C. 334 . . . . .                     | 408                                                                                                                               |
| „ v. Thorpe, 1 Phill. 269 . . . . .                                | 282, 285                                                                                                                          |
| Westerton v. Liddell, Moo. Spec. Rep. <i>passim</i> . . . . .      | 9, 35, 49, 86, 113,<br>118, 119, 165, 167, 168, 170, 174, 204, 209, 215, 234, 240, 246, 249,<br>250, 251, 293, 304, 318, 396, 399 |
| (See also Liddell v. Westerton, Liddell v. Beal, Beal v. Liddell.) |                                                                                                                                   |
| White v. Bowron, L. R. 4 Adm. & Eccl. 207 . . . . .                | 222, 252, 256                                                                                                                     |



|                                                                               | Page          |
|-------------------------------------------------------------------------------|---------------|
| Williams <i>v.</i> Brown, 1 Curt. 53 . . . . .                                | 29            |
| „ <i>v.</i> Goodyer, 2 Add. 463 . . . . .                                     | 277           |
| „ <i>v.</i> Hall, 1 Curt. 597 . . . . .                                       | 277           |
| „ <i>v.</i> Bishop of Salisbury, 2 Moo. P. C. C. (N. S.) 375 . . . . .        | 344           |
| Wilson <i>v.</i> McMath, 3 Phill. 67 . . . . .                                | 7, 297        |
| Winchester (Bishop of) <i>v.</i> Wix, L. R. 3 Adm. & Eccl. 19 . . . . .       | 331, 341, 365 |
| „ „ <i>v.</i> Rugg, L. R. 2 Adm. & Eccl. 247 ; L. R.<br>2 P. C. 223 . . . . . | 31            |
| Winchlow <i>v.</i> Smith, 1 Lee, 417 . . . . .                                | 337           |
| Woods <i>v.</i> Woods, 2 Curt. 529 . . . . .                                  | 277, 339, 340 |
| Woolcombe <i>v.</i> Ouldrige, 3 Add. 4 . . . . .                              | 312, 313      |
| Worth <i>v.</i> Torrington, 13 M. & W. 781 . . . . .                          | 269           |
| Wyllie <i>v.</i> Mott & French, 1 Hagg. Eccl. 28 . . . . .                    | 268, 298      |
| Wynn <i>v.</i> Davies & Weever, 1 Curt. 69 . . . . .                          | 342           |



## STATUTES CITED.

|                             | Page                                  |
|-----------------------------|---------------------------------------|
| <i>EDW. I.</i>              |                                       |
| 13, stat. 2, c. 1 . . . . . | 473                                   |
| 13, stat. 4. . . . .        | 277                                   |
| <i>Hen. IV.</i>             |                                       |
| 4, c. 12 . . . . .          | 15                                    |
| <i>Hen. VII.</i>            |                                       |
| 1, c. 4 . . . . .           | 359                                   |
| 3, c. 1 . . . . .           | 473                                   |
| <i>Hen. VIII.</i>           |                                       |
| 21, c. 13 . . . . .         | 33                                    |
| 23, c. 9 . . . . .          | 375                                   |
| 24, c. 12 . . . . .         | 417, 419                              |
| 25, c. 19 . . . . .         | 418, 420, 422                         |
| 25, c. 21 . . . . .         | 320                                   |
| 25, c. 22 . . . . .         | 322                                   |
| 26, c. 3 . . . . .          | 292                                   |
| 31, c. 8 . . . . .          | 48, 49                                |
| 32, c. 28 . . . . .         | 15                                    |
| 35, c. 19 . . . . .         | 282                                   |
| <i>Edw. VI.</i>             |                                       |
| 1, c. 2 . . . . .           | 437                                   |
| 1, c. 12 . . . . .          | 49, 52                                |
| 1, c. 14 . . . . .          | 16                                    |
| 2 & 3, c. 1 . . . . .       | 25, 35, 55, 86, 429,<br>457, 464, 470 |
| 2 & 3, c. 10 . . . . .      | 235, 468                              |
| 2 & 3, c. 19 . . . . .      | 55                                    |
| 2 & 3, c. 20 . . . . .      | 292                                   |
| 2 & 3, c. 21 . . . . .      | 55, 60                                |
| 3 & 4, c. 10 . . . . .      | 55, 227, 259, 464                     |
| 3 & 4, c. 12 . . . . .      | 56                                    |
| 5 & 6, c. 1 . . . . .       | 25, 58, 272, 436, 439,<br>440, 470    |

|                              | Page                                                                       |
|------------------------------|----------------------------------------------------------------------------|
| <i>Edw. VI.</i>              |                                                                            |
| 5 & 6, c. 3 . . . . .        | 60, 466                                                                    |
| 5 & 6, c. 4 . . . . .        | 60, 279, 469                                                               |
| 5 & 6, c. 12 . . . . .       | 60                                                                         |
| <i>Mary.</i>                 |                                                                            |
| 1 sess. 2, c. 2 . . . . .    | 55, 56, 60, 227                                                            |
| 1 sess. 2, c. 3 . . . . .    | 269, 439, 469, 470                                                         |
| <i>Eliz.</i>                 |                                                                            |
| 1, c. 1 . . . . .            | 55, 429, 474                                                               |
| 1, c. 2 . . . . .            | 53, 60, 61, 63, 74,<br>165, 178, 209, 223, 232, 438,<br>439, 446, 460, 474 |
| 5, c. 23 . . . . .           | 295                                                                        |
| 8, c. 1 . . . . .            | 439, 460                                                                   |
| 13, c. 12 . . . . .          | 290, 291, 445, 454, 455                                                    |
| 23, c. 1 . . . . .           | 445, 474                                                                   |
| 31, c. 6 . . . . .           | 290                                                                        |
| <i>Fac. I.</i>               |                                                                            |
| 1, c. 25 . . . . .           | 56, 60, 227, 469                                                           |
| 3, c. 5 . . . . .            | 464                                                                        |
| <i>Car. II.</i>              |                                                                            |
| 13 & 14 c. 4 . . . . .       | 3, 27, 35, 68,<br>74, 178, 213, 290, 307, 446, 474                         |
| 15, c. 6 . . . . .           | 445, 450, 456, 474                                                         |
| 29, c. 9 . . . . .           | 290                                                                        |
| <i>Will. &amp; Mary.</i>     |                                                                            |
| 1 sess. 1 c. 8 . . . . .     | 451                                                                        |
| 1, st. 1, c. 18 . . . . .    | 445, 460, 474                                                              |
| <i>Anne.</i>                 |                                                                            |
| 5, c. 5 . . . . .            | 445, 446, 474                                                              |
| 12, stat. II. c. 7 . . . . . | 450                                                                        |

|                                   | Page               |                              | Page          |
|-----------------------------------|--------------------|------------------------------|---------------|
| <i>Geo. I.</i>                    |                    | <i>Vict.</i>                 |               |
| 1, c. 10 . . . . .                | 15                 | 3 & 4, c. 60 . . . . .       | 16            |
| 3, c. 10 . . . . .                | 292                | 3 & 4, c. 77 . . . . .       | 320           |
| <i>Geo. II.</i>                   |                    | 3 & 4, c. 86 . . . . .       | 274, 323,     |
| 2, c. 31 . . . . .                | 450                | 342, 355, 381, 388, 389, 406 |               |
| 23, c. 23 . . . . .               | 449                | 6 & 7, c. 38 . . . . .       | 283, 421      |
| 23, c. 28 . . . . .               | 445, 460, 474      | 7 & 8, c. 69 . . . . .       | 421           |
| <i>Geo. III.</i>                  |                    | 8 & 9, c. 70 . . . . .       | 16, 24        |
| 13, c. 63 . . . . .               | 424                | 9 & 10, c. 68 . . . . .      | 16            |
| 18, c. 60 . . . . .               | 13                 | 9 & 10, c. 88 . . . . .      | 16            |
| 19, c. 44 . . . . .               | 13                 | 10 & 11, c. 65 . . . . .     | 33            |
| 27, c. 44 . . . . .               | 376                | 13 & 14, c. 98 . . . . .     | 319           |
| 43, c. 30 . . . . .               | 13                 | 14 & 15, c. 83 . . . . .     | 421           |
| 43, c. 108 . . . . .              | 16                 | 14 & 15, c. 99 . . . . .     | 340           |
| 51, c. 115 . . . . .              | 16                 | 15 & 16, c. 85 . . . . .     | 33            |
| 52, c. 155 . . . . .              | 13                 | 20 & 21, c. 35 . . . . .     | 33            |
| 52, c. 161 . . . . .              | 16                 | 20 & 21, c. 77 . . . . .     | 407           |
| 53, c. 127 . . . . .              | 280, 294, 295,     | 20 & 21, c. 85 . . . . .     | 407           |
| 296, 406                          |                    | 22 & 23, c. 6 . . . . .      | 407           |
| 54, c. 68 . . . . .               | 406                | 23 & 24, c. 32 . . . . .     | 277, 363      |
| 57, c. 99 . . . . .               | 33, 284            | 25 & 26, c. 3 . . . . .      | 33            |
| 58 . . . . .                      | 107                | 26 & 27, c. 79 . . . . .     | 33            |
| 59, c. 134 . . . . .              | 20, 23, 313        | 26 & 27, c. 82 . . . . .     | 30, 306       |
| <i>Geo. IV.</i>                   |                    | 28 & 29, c. 126 . . . . .    | 30            |
| 3, c. 72 . . . . .                | 24                 | 30 & 31, c. 133 . . . . .    | 22, 24        |
| 5, c. 36 . . . . .                | 391                | 30 & 31, c. 135 . . . . .    | 19            |
| 5, c. 103 . . . . .               | 17                 | 31 & 32, c. 83 . . . . .     | 33            |
| 7, c. 3 . . . . .                 | 17                 | 31 & 32, c. 109 . . . . .    | 23            |
| 10, c. 7 . . . . .                | 13                 | 31 & 32, c. 118 . . . . .    | 17            |
| <i>Will. IV.</i>                  |                    | 31 & 32, c. 122 . . . . .    | 33            |
| 1, c. 22 . . . . .                | 424                | 32 & 33, c. 56 . . . . .     | 320           |
| 1 & 2, c. 38 . . . . .            | 15, 17             | 32 & 33, c. 71 . . . . .     | 283, 284      |
| 2 & 3, c. 41 . . . . .            | 283, 296           | 32 & 33, c. 86 . . . . .     | 17            |
| 2 & 3, c. 92 . . . . .            | 282, 296, 421      | 32 & 33, c. 94 . . . . .     | 16            |
| 3 & 4, c. 41 . . . . .            | 408, 421, 422, 424 | 33 & 34, c. 23 . . . . .     | 291           |
| 3 & 4, c. 93 . . . . .            | 280                | 33 & 34, c. 91 . . . . .     | 361, 369      |
| 4 & 5, c. 76 . . . . .            | 33                 | 34 & 35, c. 43 . . . . .     | 284           |
| 5 & 6, c. 32 . . . . .            | 400                | 34 & 35, c. 26 . . . . .     | 463           |
| <i>Vict.</i>                      |                    | 34 & 35, c. 44 . . . . .     | 288, 361, 369 |
| 1 & 2, c. 106 . . . . .           | 33, 106, 274,      | 34 & 35, c. 37 . . . . .     | 475           |
| 284, 285, 306, 319, 323, 360, 364 |                    | 34 & 35, c. 45 . . . . .     | 287           |
| 1 & 2, c. 107 . . . . .           | 15, 16             | 34 & 35, c. 90 . . . . .     | 16            |
| 2 & 3, c. 49 . . . . .            | 15, 16, 364        | 35 & 36, c. 35 . . . . .     | 70, 96, 460   |
| 3 & 4, c. 20 . . . . .            | 16                 | 36 & 37, c. 66 . . . . .     | 406, 408, 426 |
| 3 & 4, c. 33 . . . . .            | 285                | 37 & 38, c. 85 . . . . .     | 274, 382-416  |

# The Law Relating to Public Worship.

## PART I.

### THE SUBSTANTIVE LAW.

#### CHAPTER I.

#### THE NATURE AND SOURCES OF ECCLESIASTICAL LAW.

##### SECTION I.—*Introductory.*



HE Ecclesiastical Law may be defined as that collective body of rules, principles, and regulations, which are administered and enforced in the Ecclesiastical Courts, or which are recognized and enforced in the ordinary legal tribunals, in respect of matters coming within their cognizance which relate to or are connected with the National Church by law established.

Definition of  
Ecclesiastical  
Law.

It is made up of three species, according to the source from which it originates, viz. :

Various species  
of Ecclesiastical  
Law.



- I. Certain statutes, together with various enactments made in pursuance of or ratified by statutes.
- II. Certain portions of the Canon Law, and certain constitutions and canons issued by competent authorities.
- III. Certain ecclesiastical usages, customs, or observances not put into writing, save so far as found in judicial decisions, but recognized as binding by, and supposed to be known to the courts,—the Ecclesiastical Common Law.

SECTION II.—*Statutes and Enactments of a Statutory Nature.*

Difficulties incidental to the determination of these enactments.

**I**T might fairly be assumed that, apart from questions of interpretation, little difficulty could exist with regard to matters coming under this head, and that the actual existence or non-existence of statutory rules would give rise to little doubt. But it is very different. Even as regards statutes, the questions are frequently by no means easy of solution. During various reigns, and more especially those of Henry VIII., Edward VI., Mary, Elizabeth, and James I., ecclesiastical statutes were again and again passed, with but very little regard to previous legislation. Sometimes prior acts were repealed simpliciter, sometimes the repeal was not merely such, but was also a revival of statutes that had previously been repealed.

Enactments in the nature of proclamations.

Similar questions, but complicated with other considerations, arise in respect of various enactments, the chief of which were put forth by the Tudor sovereigns, whether with or without the concurrence and advice of their Privy Council. Some of these enactments purport to be promulgated in virtue of the royal prerogative, while others more or less vaguely refer to particular statutes. Of such enactments, the “Injunctions” issued by Edward VI. in 1547, and by Elizabeth in 1559, and the “Adver-

tisements" of the latter sovereign in 1564, are in every way the most important. They are respectively given at length in part iii. chapter iii.; and they are also considered with some care in chapter iii. section 2, chapter v. section 2, and chapter vii. section 2 of this part.

In addition to such enactments, there are the rubrics of the Book of Common Prayer. The Act of Uniformity of 1662 (*a*) provides that the Book of Common Prayer attached thereto should henceforth alone be used in manner and form as appointed. This provision is explicit enough, and no one has ever raised any doubt as to its meaning; and the rubrics are also couched in terse and unambiguous language. Nevertheless, as will be seen subsequently in chapters v. vii. and viii. of this part, difficulties have been repeatedly raised in regard to the construction of many of the rubrics and to the interpretation thereof, which have required the intervention of the highest Court of Appeal for their determination.

Rubrics.

### SECTION III.—*The Anglican Canon Law.*

HE Canon Law is a body of Roman ecclesiastical law, relative to such matters as that church either has, or pretends to have, the proper jurisdiction over. This is compiled from the opinions of the ancient Latin fathers, the decrees of general councils, and the decretal epistles and bulls of the holy see; all which lay in the same disorder and confusion as the Roman civil law, till, about the year 1151, one Gratian, an Italian monk, in imitation of Justinian's Pandects, reduced the ecclesiastical constitutions also into some method in three books, which he entitled "*Cōcordia Discordantium Canonum*," but which are generally known by the name of "*Decretum Gratiani*." These reached as low as the time of Pope

What is meant by the Canon Law.

(*a*) 13 & 14 Car. II. c. 4, s. 2.

Alexander III. The subsequent papal decrees to the pontificate of Gregory IX. were published in much the same method, under the auspices of that pope, about the year 1230, in five books, entitled "Decretalia Gregorii Noni." A sixth book was added by Boniface VIII., about the year 1298, which is called "Sextus Decretalium." The Clementine constitutions, or decrees of Clement V., were in like manner authenticated in 1317 by his successor, John XXII., who also published twenty constitutions of his own, called the "Extravagantes Johannis," all which in some measure answer to the novels of the Civil Law. To these books have been since added some decrees of later popes, in five books, called "Extravagantes Communes;" and all these together, "Gratian's Decree," "Gregory's Decretals," the "Sixth Decretal," the "Clementine Constitutions," and the "Extravagants" of John and his successors, form the corpus juris canonici, or body of the Roman Canon Law.

Validity of the  
Canon Law in  
England.

The above is Blackstone's account of the Canon Law, (b) and it is admitted to be not only succinct, but correct. It is however not now, if it ever were, binding in the British empire, *proprio vigore*, and as having been promulgated by the bishop of Rome. Whatever authority has at various times been possessed by the pope as spiritual head—if indeed he ever were such—of the Anglican church, that authority was a religious, a spiritual one only, of the same kind as that possessed by the head of every sect. Legally, and viewed as enforceable by civil means, it was subordinate to and based upon the laws and constitution of this country.

The Anglican  
Canon Law.

Consequently, the Canon Law, in so far as it emanated from the Bishop of Rome, and purported to derive its binding force from his sanction, always has been, prior to the Reformation, as well as since, simply inoperative here. "But England

(b) See Stephens' "Commentaries," Introduction, sec. 3.

possesses in her provincial constitutions, collected by Lyndewode, a body of domestic Ecclesiastical Law, upon which before the Reformation a national, independent character was in many respects impressed. The Common Law was disposed to recognize these constitutions, while to the general Canon Law it manifested considerable averseness. But it has always been the doctrine of the temporal and ecclesiastical courts since the Reformation, that the constitutions contained in Lyndewode and the general usages of the church, and certain portions of the Canon Law admitted by those usages, are still binding upon the church of this realm." This is the language of the present Dean of Arches, in *Martin v. Mackonochie*, (c) when examining at considerable length the origin and continuity of the Anglican Church.

Blackstone, in reference to the same question as to the validity of the Canon Law, says:—"Besides these pontifical collections, which during the times of popery, were received as authentic in this island, as well as in other parts of Christendom, there is also a kind of national Canon Law, composed of legatine and provincial constitutions, and adapted only to the exigencies of the church and kingdom. The legatine constitutions are ecclesiastical laws, enacted in national synods held under the Cardinals Otho and Othobon, legates from Pope Gregory IX. and Pope Clement IV., in the reign of King Henry III., about the years 1220 and 1268. The provincial constitutions are principally the decrees of provincial synods, held under divers archbishops of Canterbury, from Stephen Langton, in the reign of Henry III., to Henry Chichele, in the reign of Henry V., and adopted also by the province of York, in the reign of Henry VI. At the dawn of the Reformation in the reign of King Henry VIII., it was enacted in parliament that a review should be had of the Canon Law, and, till such review should be made, all canons, constitutions, ordinances, and synodals provincial, being then

(c) L. R. 2 Adm. & Eccl. 116, 153.



already made, and not repugnant to the law of the land or the King's prerogative, should still be used and executed. And as no such review has yet been perfected, upon this enactment now depends the authority of the Canon Law of England, the limitations of which appear upon the whole to be as follows: that no canon contrary to the Common or Statute Law, or the prerogative royal, is of any validity; that subject to this condition, the canons made anterior to the parliamentary provision above mentioned, and adopted into our system (for there are some which have had no reception among us) are binding both on clergy and laity; but that canons made since that period, and having no sanction from the parliament, are, as regards the laity at least, of no force." (*d*)

#### SECTION IV.—*The Ecclesiastical Common Law.*

The unwritten  
Ecclesiastical  
Law.

**I**N addition to the written provisions, whether of statutory or canonical authority, which constitute the *jus ecclesiasticum scriptum*, there is a *jus ecclesiasticum non scriptum*, consisting of certain ecclesiastical usages, customs, or observances, not put into writing, save so far as found in judicial decisions, nor anywhere met with in concrete expressions, but recognized as binding by, and supposed to be known to, the Courts. This, from analogy to the well-known legal term, may be styled the Ecclesiastical Common Law, and its existence may be established by a reference to the usual authorities.

Authorities  
showing that  
there is an  
Ecclesiastical  
Common Law.

"There is a common law ecclesiastical as well as our common law, *jus commune ecclesiasticum* as well as *jus commune laicum*." (*e*)

(*d*) As to the force in respect of the laity of canons passed by convocation, but not ratified by parliament, see the judgment of Lord Hardwicke in *Crofts v. Middleton*, 2 Atk. 650, 2 Str. 1056; and of the House of Lords in the recent suit of *Bishop of Exeter v. Marshall*, L. R. 3 H. L. 17.

(*e*) Per Mr. Justice Whitelock in *Evans v. Owen*, Godbolt, 432.



“The question whereon we are called to answer depends upon the Common Law of England, of which the Ecclesiastical Law forms a part.” This is a statement by the Lord Chief Justice Tindal in the *Queen v. Millis*. (f) Later on, in the same case, this judge said :—“I proceed in the last place to endeavour to show that the law by which the Spiritual Courts of this kingdom have from the earliest time been governed and regulated is not the general Canon Law of Europe, imported as a body of law into this kingdom, and governing those courts *proprio vigore*, but instead thereof, an Ecclesiastical Law of which the general Canon Law is no doubt the basis, but which has been modified and altered from time to time by the ecclesiastical constitutions of our archbishops and bishops, and by the legislature of the realm, and which has been known from early times by the distinguishing title of the King’s Ecclesiastical Law. . . . That the Canon Law of Europe does not, and never did, as a body of laws form part of the law of England has been long-settled and established law.” (g)

Opinion of Lord Chief Justice Tindal.

And Lord Abinger expressed himself very similarly :—“The learned judges have, I think, satisfactorily derived it [*i. e.*, the Ecclesiastical Law of England] from the constitutions of the synods and councils in England, before the authority of the pope was acknowledged in this country. I take that part only of the foreign law to be Ecclesiastical Law of England which has been adopted by parliament or the courts of this country.” (h)

Lord Abinger.

The language used by Sir John Nicholl in *Wilson v. M<sup>c</sup>Math* (i) is perhaps most in point :—“The case is said to be a new one, so far as regards any express law or any judicial decision on the subject. There is no statute, no canon, no reported judgment, either expressly affirming or expressly

Sir John Nicholl.

(f) 10 Cl. & F. 534, 671.

(h) *Ibid.* p. 745.

(g) *Ibid.* p. 578.

(i) 3 Phill. 67, 78-9.

negating the right. It nevertheless may exist as a part of the Common Law of the land, as a part of the *lex non scripta*, which is of binding authority as much in the Ecclesiastical as in the Temporal Courts. Indeed the whole Canon Law rests for its authority in this country upon received usage; it is not binding here *proprio vigore*. Moreover, this Court upon many points is governed, in the absence of express statute or canon, by the *jus tacito et illiterato hominum consensu et moribus expressum*.

“It is true that generally the existence of this *jus non scriptum* is ascertained by reports of adjudged cases: but it may be proved by other means; it may be proved by public notoriety, or be deducible from principles and analogy, or be shown by legislative recognitions. Published reports of the decisions of Ecclesiastical Courts (with one very recent exception) do not exist; and if they did, yet the particular right in dispute may never have been so much as doubted or questioned before.”

Sir H. J. Fust.

This and other judgments to the same effect are cited with approval, and their conclusions adopted, by Sir H. J. Fust in *Sandars v. Head* (k):—“From all these cases it seems that the jurisdiction of the Ecclesiastical Court in matters ecclesiastical does not depend upon any particular canon or statute, but on the general Ecclesiastical Law, and on the universal consent by which some matters are exclusively of ecclesiastical and not of temporal cognizance.”

Sir Robert  
Phillimore.

Lastly, may be cited the language employed by the present Dean of Arches in *Martin v. Mackonochie* (l):—“Is there a Common Law of the church, unwritten, living by usage, though partly expressed, perhaps, by judicial decisions; but still more, to use a common expression, taken for granted by all authorities in church and state, filling up the void of positive provision

(k) 3 Curt. 565, 583.

(l) L. R. 2 Adm. & Eccl. 195, 196.

in statute or formulary; a necessary part of an organized religious system and establishment, rendering the practical working of it possible, and, on the whole, harmonious?

“That there has been such a usage in the church at large from its earliest foundation is certain. ‘We know no such customs, neither we nor the churches of God,’ was the language, which we learn from inspired authority, she used as her shield against the earliest assaults upon her integrity. ‘Let the ancient customs prevail,’ was the maxim fatal to the mediæval and modern pretensions of Rome, which the church enunciated in her earliest œcumenical council. The Canon Law of the western church fully recognizes customs and usages as a distinct source of ecclesiastical jurisprudence. Was the branch of this church, which the constitution and the legislature have established in this kingdom, devoid of this subsidiary aid to her discipline and government?

“There is, therefore, a common law of the church which runs by the side of the statute law, and which must assist in the construction of it.”

As to the bearing of these different species of Ecclesiastical Law upon questions of public worship, it must be observed that the matters treated of in chapters iii. iv. v. vii. and viii. of this part, viz., Liturgy, Rites and Sacraments, Ceremonial, Vestments, Ornamentation—depend primarily and mainly, if not entirely, upon statutory and quasi-statutory enactments—that is, upon the first species of Ecclesiastical Law as herein divided. With regard to all these subjects the rule laid down in *Westerton v. Liddell*(*m*) applies. “In the performance of the services, rites, and ceremonies(*n*) ordered by the Prayer Book, the directions contained in it must be strictly

Bearing of the different species of Ecclesiastical Law upon public worship.

(*m*) Moore, Special Report, p. 187. See *post*, chap. v., where this rule is fully examined.

(*n*) “And in the adoption of ornaments,” see the case cited, and *Hebbert v. Purchas*, L. R. 3 P. C. 66.

observed; no omission and no addition can be permitted." Manifestly these directions are of a statutory nature, and therefore, to the extent and in the circumstances to and in which they extend and are operative, the Ecclesiastical Common Law is excluded.

Other questions;

how to be determined.

Of the remainder of the subjects which are examined in this book, as well as of the rest of the law relating to the church and clergy, much depends upon and must be determined by the law coming under the second and third heads of this chapter—that is, the National or Anglican Canon Law and the Ecclesiastical Common Law. There is, no doubt, occasionally a great difficulty (as will be shown more fully subsequently) (*o*) in determining whether the Statutory, the Canonical, or the Common Law is to govern points in dispute. But this question has to be determined, in the first place, by determining what is the exact nature of the matter which is debated—does it come within the rule of *Westerton v. Liddell*, taking that in its widest form, or not? If it does, then its decision depends upon the Ecclesiastical Laws of the first species which concern it. If it does not, then according to the facts and circumstances, the decision may or may not depend on the law of either of the three kinds. Thus in chapters vi. and ix., "Subsidiary Matters of Ceremonial and Ornamentation," respectively, the most important question is, what matters are to be deemed "subsidiary," and not, by what law is their legality to be tested?

#### SECTION V.—*Effect of Usage.*

Effect of Usage.



WHENEVER an ecclesiastical question falls under the third species of Ecclesiastical Law—that is, when it is one which belongs to the Ecclesiastical Common Law, usage and custom, although they will not actually make the law, will be of great importance in illustrating and interpreting it.

(*o*) See chaps. vi. and ix.



In *Martin v. Mackenzie*, (p) the members of the Privy Council thus stated their view as to the value to be given to usage :  
 “ Their lordships have not referred to the usage as to lights during the last three hundred years ; but they are of opinion that the very general disuse of lights after the Reformation (whatever exceptional cases to the contrary might be produced), contrasted with their normal and prescribed use previously, affords a very strong contemporaneous and continuous exposition of the law upon the subject.”

Judgment of  
the Privy  
Council.

In the subsequent case of *Hebbert v. Purchas* (q), they made the following important remarks upon the same subject :—

“ Their lordships attach great weight to the abundant evidence which now exists, that from the days of Elizabeth to about 1840 the practice is uniformly in accordance with this view ; and is irreconcilable with either of the other views. Through the researches that have been referred to in these remarks, a clear and abundant *expositio contemporanea* has been supplied, which compensates for the scantiness of some other materials for a judgment.

“ It is quite true that neither contrary practice nor disuse can repeal the positive enactments of a statute, but contemporaneous and continuous usage is of the greatest efficacy in law for determining the true construction of obscurely-framed documents. In the case of the *Attorney-General v. the Mayor of Bristol*, Lord Eldon observes : ‘ Length of time (though it must be admitted that the charity is not barred by it) is a very material consideration, when the question is, what is the effect and true construction of the instrument ? Is it according to the practice and enjoyment which has obtained for more than two centuries, or has that practice and enjoyment been a breach of trust ? ’ We may ask in like manner, what is the true construction of the Act of 1662, and of the rubric which it sanctioned ? Is it

No contrary  
usage can repeal  
a statute.

(p) L. R. 2 P. C. 365, 391.

(q) L. R. 3 P. C. 605, 649, 650.

according to the practice of two centuries, or was the practice a continual breach of the law, commanded and enforced by the bishops, including the very bishops who aided in framing the act ? ”

Judgment of  
Sir Robert  
Phillimore.

And later, in *Elphinstone v. Purchas* (r), Sir Robert Phillimore, with reference to the same matter, said, “No amount of desuetude can repeal the obligations of a statute, much less render its provisions unlawful. But it has been urged that the admitted disuse till within a very recent period of these ornaments since the Restoration affords a *contemporanea expositio*, which removes all doubt as to the meaning of the rubric. In the first place, this argument implies that the words of the rubric are such as to raise a doubt, whereas in themselves the words are perfectly plain and clear. In the second place, the disuse is practically accounted for by the circumstances to which I have just adverted in dealing with the argument from the Visitation Articles. In truth, however, the argument is bad, from the vice of proving a great deal too much. The same argument would make the copes in the cathedral unlawful, which it is admitted they are not ; the use of the surplice in preaching unlawful, which is the proper dress ; and, *e converso*, would establish the legality of the use of the black gown, which has no warrant of law, and would render unlawful the credence table, and this last ornament affords a special illustration of the inapplicability of this argument.”

(r) L. R. 3 Adm. & Eccl. 66, 91.

CHAPTER II.

GENERAL MATTERS RELATING TO THE  
CONDUCT OF PUBLIC WORSHIP.

SECTION I.—*The Place for holding Public Worship.*



HIS volume deals with only the public worship of the Church of England—that is to say, with worship which is conducted under such circumstances as bring those concerned in the conduct thereof within the provisions of the law, ecclesiastical or civil, relating to the same, and render them amenable to the jurisdiction of the tribunals. In the reigns of the Tudors and Stuarts, many statutes were passed prohibiting under very severe penalties the holding publicly any form of worship save such as was in accordance with the Prayer Book then in use, and save by persons lawfully ordained. Such statutes however have been of late, with few if any exceptions, repealed. (s)

Early Statutes  
relating to  
Public Worship.

Therefore persons performing worship in places or buildings or under circumstances, other than such as render the service therein or so performed a service of the Church of England, may perform such worship in any manner or form pleasing to themselves. But if the service under consideration actually

(s) See especially 18 Geo. III. c. 60; 19 Geo. III. c. 44; 43 Geo. III. c. 30; 52 Geo. III. c. 155; 10 Geo. IV. c. 7.

be a church service, whether so intended or not, and within the purview of the tribunals having jurisdiction in respect of such matters, it must be performed in accordance with certain rules and ceremonies—that is to say, those laid down in the Common Prayer.

Consecration.

The law takes no cognizance of churches or chapels till they have been consecrated by the bishop (*t*), which is the reason why a church or not a church, a chapel or not a chapel, shall be determined by the certificate of the bishop. (*u*)

Definition of church;

A church, as distinct from a chapel, may be defined as the mother or chief legal place of worship in a parish or other ecclesiastical district. Under all circumstances it will be subject to ecclesiastical jurisdiction; chapels are not necessarily or always so.

and chapel.

Under the term chapel are included two kinds of edifices, viz. first, those buildings styled indifferently “side chapels,” “lady chapels,” and “aisles,” which are attached to and are parcel of a church or cathedral; and secondly, a building separate from and of subordinate importance to a church. Chapels of the latter description are of six kinds.

Parochial Chapels.

First, Parochial Chapels, which have various parochial rights, and at least that of christening, but which differ in certain material respects from churches, and at least in the want of a rectory and endowment. (*v*) Frequently, on the union of two parishes, the church in the one is made the parish church, while the other becomes a parochial chapel, but seldom or never a chapel of ease. (*w*)

When not merely has the chapel the above rights of baptism and burial, but the inhabitants around can claim them there and

(*t*) See *Battiscombe v. Eve*, 9 Jur. (N. S.) 210, 7 L. T. (N. S.) 697; *Turner v. Parishioners of Hanwell*, 1 Notes of Cases, 368.

(*u*) Coke, 3 Inst. 203.

(*v*) 1 Burn, Eccl. Law, 299; Degge’s “Parson’s Counsellor,” by Ellis, 227.

(*w*) *Att.-Gen. v. Brereton*, 2 Ves. Sen. 425, 427.



not elsewhere, and the minister has small tithes and surplice fees and an augmentation, the benefice is styled a *perpetual curacy*. The origin of these seems to be due to the statute 4 Hen. IV. c. 12, that "in every church appropriated there shall be a secular person ordained vicar perpetual, canonically instituted and inducted, and convenably endowed by the discretion of the ordinary." By 2 & 3 Vict. c. 49, s. 2, (x) it is provided that any church or chapel augmented by the governors of Queen Anne's Bounty and having a district, is to be a perpetual curacy, and the minister to be an incumbent with perpetual succession, &c., and to have exclusive cure of souls within the district.

Perpetual  
curacy.

A perpetual curate is not as such the owner in fee simple of the lands annexed to the curacy, nor can he, even with the consent of the patron, lease them so as to bind his successors. (y)

Secondly, Chapels of Ease. These are simply accessories to the mother church, and found in districts which from their area or population require additional facilities for worship. They have the ordinary officials, clerks, wardens, &c, but are served from and are under the control of the church to which they are subsidiary. Under special circumstances a chapel may have authority to administer baptism and to bury, without ceasing to be a chapel of ease. (z) By the Church Building Acts provision is made for enabling the quasi-districts annexed to chapels of ease to be converted into parishes. (a)

Chapels of Ease.

Thirdly, Free Chapels. These are exempt from the ordinary jurisdiction. They are such as are erected by the sovereign, or by a subject expressly empowered by letters patent so to do. (b)

Free Chapels.

(x) Compare 1 Geo. I. c. 10.

(y) *Doe dem. Richardson v. Thomas*, 9 Ad. & Ell. 556; 32 Hen. VIII. c. 28, s. 1. See generally, as to the rights and powers of perpetual curates, *Jenkinson v. Thomas*, 4 T. R. 665; *Mason v. Lambert*, 12 Q. B. 795; *Jones v. Ellis*, 2 Y. & J. 265, and cases cited; *Greenslade v. Darby*, L. R. 3 Q. B. 421.

(z) *Line v. Harris*, 1 Lee, 146, 155.

(a) See 1 & 2 Will. IV. c. 38, s. 28; 1 & 2 Vict. c. 107, s. 7.

(b) Degge's "Parson's Counsellor," by Ellis, 227.

By 1 Ed. VI. c. 14, "An Act for Chantries Collegiate," all chantries, free chapels, hospitals, &c., were granted to and vested in the king. (*c*)

Private  
Chapels.

Fourthly, Private Chapels which have been built by persons of wealth, usually in immediate contiguity to their own dwellings, and the repair of which, the supplying of them with chaplains, and generally the expenses and charges thereof fall upon the founder and his representatives. They usually are, and always ought to be, duly consecrated or at least licensed. (*d*) The parson of the parish is under no obligation to supply with ministers the private chapels within his district. (*e*)

District  
Chapels.

General pur-  
port of Church  
Building Acts.

Fifthly, District Chapels, which have been erected under the provisions of the numerous Church Building Acts. (*f*) For convenience it may be stated that the general effect of these statutes is very briefly as follows : that the church building commissioners can, with the consent of the bishop of the diocese, assign a district to any chapel of ease already existing or to any chapel built, or which may hereafter be built or acquired under the powers of the Church Building Acts ; but the stipendiary curate thereof is to be nominated by the incumbent of the parish to the bishop of the diocese for his license, and the emoluments of the incumbent are not to be affected unless the commissioners, with the consent of the bishop of the diocese, shall see fit to design to the minister of the chapel a portion of the fees arising from the performance of those offices of the church which the commissioners may determine with the like consent should be performed in such chapels respectively. The commissioners can also, with the consent of the bishop of the diocese, under his hand

(*c*) Better known as the "Act for Superstitious Uses."

(*d*) See Lyndewode, 233.

(*e*) *Herbert v. Dean and Chapter of Westminster*, 1 P. Wms. 773.

(*f*) See 43 Geo. III. c. 108 ; 51 Geo. III. c. 115, and 52 Geo. III. c. 161 ; 1 & 2 Vict. c. 107 ; 2 & 3 Vict. c. 49 ; 3 & 4 Vict. cc. 20 and 60 ; 8 & 9 Vict. c. 70 ; 9 & 10 Vict. cc. 68 and 88 ; 17 & 18 Vict. c. 32 ; 32 & 33 Vict. c. 94. See also 34 & 35 Vict. c. 90.

and seal unite part of the contiguous parishes into ecclesiastical districts.

Sixthly, Proprietary or Subscription Chapels. These are erected generally in accordance with the provisions of the various Church Building Acts (*g*), but sometimes in virtue of a special act (*h*), or even by persons acting *proprio motu*, and without statutory or ecclesiastical authority to build. (*i*)

Proprietary  
Chapels.

These chapels are usually not consecrated, but merely licensed by the bishop; and on the one hand the bishop can at any moment revoke his license (*j*), while on the other it seems that the proprietors of such a building may at their pleasure turn it to secular purposes. (*k*)

It appears also that the incumbents thereof cannot perform any parochial offices in such buildings (*l*), or even distribute the alms collected at the Lord's Supper (*m*); and that the rights of property therein remain in full entirety in the owners, who may at any time, even during Divine worship, exercise the ordinary rights of ownership, *e.g.* by excluding from the building any person whatever. (*n*)

Here may be mentioned the chapels which are connected with colleges, schools, hospitals, and other similar institutions. They may be either consecrated or simply licensed, or neither consecrated nor licensed, and the general law relating to them will be the same as that relating to ordinary places of worship of the same class. By 31 & 32 Vict. c. 118, s. 31, as to chapels attached to the public schools, and by 32 & 33 Vict.

College and  
School Chapels,  
&c.

(*g*) See 5 Geo. IV. c. 103; 1 & 2 Will. IV. c. 38.

(*h*) See 7 Geo. IV. c. iii. and *Elphinstone v. Purchas*, L. R. 3 Adm. & Eccl. 66, 75.

(*i*) See *Barnes v. Shore*, 1 Rob. 382, 8 Ad. & Ell. 640; *Carr v. Marsh*, 2 Phill. 198; *Bosanquet v. Heath*, 9 W. R. 35.

(*j*) *Hodgson v. Dillon*, 2 Curt. 388.

(*k*) Per Sir John Nicholl, 2 Hagg, Eccl. 50.

(*l*) *Moycey v. Hillcoat*, 2 Hagg, Eccl. 30.

(*m*) *Ibid.* See however *Liddell v. Rainsford*, 38 L. J. Eccl. 15.

(*n*) *Bosanquet v. Heath*, 9 W. R. 35.

c. 86, s. 53, as to chapels attached to other endowed schools, it is provided that such chapels shall be free from the jurisdiction and control of the incumbent of the parish in which such chapel is situate.

34 & 35 Vict.  
c. 66.

Provisions somewhat more specific are contained in 34 & 35 Vict. c. 66, (o) which enacts as follows :—

“Section 1. The bishop of the diocese within which any chapel belonging to any college, school, hospital, asylum, or public charitable institution is situated, whether consecrated or unconsecrated, may license a clergyman of the Church of England to serve such chapel and administer therein the Sacrament of the Lord’s Supper, and perform such other offices and services of the Church of England as shall be specified in such license, provided that the bishop shall not include in any such license the solemnization of marriage, and may, if he think fit, revoke the same at any time.

“Section 2. The minister officiating in such chapel shall, with respect to the performance of the offices and services specified in such license, be subject to no control or interference on the part of the incumbent of the parish or district in which such chapel is situate; but nothing herein contained shall prejudice or affect the right of such incumbent to the entire cure of souls throughout such parish or district elsewhere than within such institution and the chapel thereof.

“Section 3. The offertory and alms collected at any chapel subject to the provisions of this act shall be disposed of as the minister shall determine, subject to the direction of the Ordinary.”

Oratories.

*Oratories* may also be noticed. These are places, whether covered in or open to the weather, intended merely for prayer. No consecration or license was required for the establishment of such, but it was usual to obtain for them some kind of episcopal recognition.

(o) “An act to amend and define the Law relating to Private Chapels and to Chapels belonging to Colleges, Schools, Hospitals, Asylums, and other Public Institutions.”



These being the chief varieties of buildings known to the Ecclesiastical Law of the Church of England, it may be laid down strictly that no ordained minister of the Church may, without express license in that behalf, presume to hold public worship in any other edifice. In *Freeland v. Neale* (p) a clergyman was proceeded against for having officiated in an unconsecrated chapel connected with Sackville College, East Grinstead, in the county of Sussex, without a license, he having refused to desist although the bishop of the diocese had enjoined him to do so. He was monished to abstain from officiating in future without the license of the bishop, and condemned in the costs.

Church of England minister can officiate in buildings aforesaid only.

## CONSECRATION AND RE-CONSECRATION.

A building which has once been consecrated for worship may not be reconsecrated as long as the effect of the original act remains. (q)

Effect of consecration can be destroyed—

But this effect may be destroyed in various ways. First, by pollution by the shedding of blood therein. Matthew Paris, in his account of the suspension of the celebration of divine service in the cathedral of Canterbury, after the murder of Archbishop Becket, says: “Post mortem beati Thomæ martyris fere anno integro, ecclesia Cantuariensis a divinis cessans obsequiis, continuis perstitit in lamentis, subversum est ecclesiæ pavimentum, sonus est campanarum suspensus, nudati sunt parietes ornamentis, et sic quasi in cinere et cilicio exequias in tristitia et mœrore persolvit. Sed tandem ad matris suæ Dorobernensis ecclesiæ vocationem, in festo sancti Thomæ Apostoli, suffraganei convenerunt episcopi, ut ecclesiam, longa suspensione consterna-

1. By blood pollution.

(p) 1 Rob. Eccl. 643, 12 Jur. 635, *Barnes v. Shore*, 1 Rob. 382, 390, where the bishop had revoked the license for service in an unconsecrated chapel, and the clergyman continuing to conduct the services there was monished to refrain and condemned in costs. Compare *Kitson v. Drury*, 11 Jur. (N. S.) 272.

(q) As to the fees which may be taken upon consecration, see 30 & 31 Vict. c. 135.

tam, juxta mandatum domini papæ, in statum pristinum reformarent. Bartholomæus igitur Exoniensis episcopus, ad petitionem conventus, missam celebraturus solennem, et sermonem ad populum habiturus, sic exorsus est : ‘Secundum multitudinem dolorum meorum in corde meo, consolationes tuæ lætificant animam meam.’ ”

2. By use of consecrated buildings for temporal purposes.

Secondly, by the defilement of the sacred edifice by turning it to temporal purposes, as in the case of a church at South Malling, mentioned in Gibson’s “Codex,” (r) “per bestias et animalia diversorum generum aliisque modis profanata, et polluta.” So of a chapel at Hereford which for a long time had been “ad sæculares usus applicata et prophanata, scilicet cubile factum pro bestiis ac pabuli pro eisdem et fœni repositorium,” (s) though in this case since the walls and roof had not been demolished, a reconciliation (see *post*, p. 23) was deemed sufficient.

3. By destruction and rebuilding.

Thirdly, by destruction and rebuilding. Thus, in *Battiscombe v. Eve*, (t) Dr. Robertson in the Consistory Court of Rochester, held that a re-consecration was required, the whole church, except one arch, having been pulled down and rebuilt. So in *Warner v. Gater*, (u) a church rate for defraying the expense of the consecration of a church rebuilt under the statute 59 Geo. III. c. 134, s. 40, was held valid, although no faculty had been granted. And subsequently it was again decided, that if a church is entirely taken down and rebuilt, re-consecration is necessary. (v)

The church must be wholly rebuilt.

But it now seems to be established by the authorities, that to require a re-consecration, a church must not merely be rebuilt, but rebuilt upon other than its original foundation. “Their Lordships are particularly desirous that it should be understood that they do not mean by any observation to give authority to the position, that if a church be rebuilt upon the old lines of

(r) Pp. 189, 190.

(s) Reg. Laud, 286 b.

(t) 9 Jur. (N. S.) 210; 7 L. T. (N. S.) 697.

(u) 2 Curt. 315.

(v) *Turner v. the Parishioners of Hanwell*, 1 Notes of Cases, 358.

foundation, including within the same originally consecrated ground and no more, such church does need re-consecration. We give no judicial opinion upon that. We desire, however, to have it clearly understood that we do not by any means intend to recognize or to sanction such a doctrine as being in our opinion a just view of the law. But that point will not be involved in our present judicial determination." These are the words of Lord Westbury, delivering the judgment of the Privy Council in *Parker v. Leach*,<sup>(x)</sup> where, however, as mentioned, the precise question was not raised.

*Parker v.  
Leach.*

The facts there were as follows. A faculty was applied for and granted for the repair of the church. The church consisted of a nave, two aisles, the chancel, and tower. It would seem that it had been ascertained that the walls of the body of the church, including the nave aisles, required to be completely taken down. The tower did not stand in need of reparation, but all the walls running from the tower north and south to the east required entire rebuilding. The eastern wall did not stand in need of being rebuilt. Accordingly the faculty directed the repair of the church to be made in conformity with that necessity. The tower, therefore, remained untouched; the eastern wall, in which were three windows, one on either side, also remained untouched, except so far as it was necessary to pull down a part at either end of the eastern wall, for the purpose of tying on to it the new north and south walls that were erected. The whole of the interior of the nave or body of the church was altered, and whereas in former times there had been an arched doorway communicating between the nave and the tower, that doorway was stopped up, a new porch or entrance to the body of the church was erected, the north and south walls were erected, and the interior of the nave of the church was renewed. With reference to the chancel there was

(x) L. R. 1 P. C. 312, 322.

some conflicting evidence, but the witnesses agreed that the communion table within the chancel had on either side of it, north and south, two low walls, forming as it were an interior chancel. These low walls were not touched so far as removal was concerned, but they appear to have been added to and carried to a greater height. The communion table being very old was replaced by a new one.

Under these circumstances the Privy Council held that there had not been such a rebuilding as to need a fresh consecration.

4. By moving  
the Holy Table.

Fourthly,—Where the Holy Table has been moved. This unquestionably was the ancient canonical law, and it appears to be the basis of Dr. Lushington's decision in *Turner v. Parishioners of Hanwell*. (y)

30 & 31 Vict.  
c. 133, as to  
reconsecration.

But grave doubts have been thrown upon the accuracy of such judgment by the judgment of the Privy Council in the cause cited on the preceding page of *Parker v. Leach*. (z)

To remove some of the doubts upon this subject, the statute 30 & 31 Vict. c. 133, has been passed, section 12 of which enacts :—

Section 12. "Whereas doubts are entertained whether in cases where a church or chapel has been rebuilt, repaired, or enlarged, and the external walls have been partly destroyed, or the position of the communion table altered, a re-consecration of such church or chapel be not necessary in order to the due and valid administration of divine offices there: be it declared and enacted, that all marriages, rites, and ceremonies heretofore or hereafter celebrated or performed in a consecrated church or chapel which may have been rebuilt, repaired, or enlarged, prior to such celebration or performance, and wherein such marriages, rites, and ceremonies might have been legally solemnized or performed previously to such rebuilding, repair, or enlargement, shall be valid and effectual for all purposes, notwithstanding that upon such repair or enlargement the

(y) 1 Notes of Cases, 368.

(z) *Ubi supra*.



external walls of such church or chapel may not have remained entire, or the position of the communion table may have been altered, and notwithstanding that since the rebuilding, repair, or enlargement, no re-consecration of such church or chapel may have taken place.”

In reference to the second, third, and fourth of the above instances of desecration, it may be observed that the usual ceremony in the Anglican Church has been a *reconciliation* only, and not a full consecration. Reconciliation.

As to the removal of consecrated buildings, in *Clayton v. Dean*,<sup>(a)</sup> a faculty was granted for removing a consecrated chapel to another site ; but the learned judge who granted the faculty observed, that it was possible that different legal considerations might apply to the case of a parish church. Removal of consecrated buildings.

By 59 Geo. III. c. 134 (one of the Church Building Acts), s. 40, a general provision was made for the pulling down of old parish churches and rebuilding them on new sites, as follows :—

“Where any parish shall be desirous of extending and increasing the accommodation in the parish church, and it shall be found necessary or expedient to that end to take down the existing church and to rebuild the same, on the same site, or on a more convenient site, it shall and may be lawful for the churchwardens of any such parish, with the consent of the vestry, or persons possessing the powers of vestry, and with the consent also of the ordinary patron, incumbent, and lay impropriator, if any such there be, to take down such existing church, and to rebuild the same upon the same or upon a new site.”

This section goes on to empower the churchwardens to levy church rates for these purposes ; but this power, like that of levying other church rates, is affected by the Compulsory Church Rate Abolition Act, 31 & 32 Vict. c. 109.

(a) 7 Notes of Cases, 46.

By 3 Geo. IV. c. 72, s. 30, the commissioners—that is, now, the Ecclesiastical Commissioners—may transfer the endowments of the old churches to the new ones. These provisions are further extended by 8 & 9 Vict. c. 70, s. 1.

Churchyards.

As to churchyards,—these of course must be consecrated, and when any enlargement takes place, the added portion is to be consecrated.<sup>(b)</sup> Great facilities are afforded by the recent statute, 30 & 31 Vict. c. 133.

Vaults.

Where there is a church or chapel with vaults underneath, but without any consecrated burial land adjoining, it is determined that “the ordinary cannot compel an incumbent by ecclesiastical censure to perform the burial service on the unconsecrated ground in which the only entrance to the vault is to be found.”<sup>(c)</sup> Consequently, the sacredness of vaults simply depends upon the fact whether they are or are not in, and parcel of, a consecrated area.

## PLACE OF THE PERSON CONDUCTING PUBLIC WORSHIP.

Position to be taken by minister in performing service in sacred edifice.

The above being an account of the buildings in which Public Worship may be carried on, the next question is as to the exact locality or position, if any, in these buildings, to be taken by the minister while conducting worship. The present rubric at the beginning of the Prayer Book says, “The morning and evening prayer shall be used in the *accustomed place*.” In reference to this the Second Book of Edward VI.<sup>(d)</sup> directs that “the morning and evening prayer shall be used in such place of the church, chapel, or chancel, and the minister shall so turn him as the people may best hear;” while the First Book <sup>(d)</sup> directed that “the priest being in the quire shall begin with a loud

(b) Gibson’s “Codex,” 190.

(c) *Rugg v. Kingsmill*, L. R. 2 P. C. 59, 63.

(d) See *post*, c. iii. s. 3.

voice, &c.” It will be observed that the changes have been first, from the “quire,” *i.e.* chancel, to “such place of the church, chapel, or chancel, as the people may best hear;” and secondly, from this latter spot to the “accustomed place.” The first change was made in deference to the groundless complaints of some of the more extreme of the Reformers. It was in force only while the First Prayer Book was in use, that is to say, for one year and a half, *viz.* from the “Feast of Pentecost,” 1552,<sup>(e)</sup> to “All Saints’ Day,” 1553.<sup>(f)</sup> Therefore, as such use could not establish any pretence of a custom, the “accustomed place” must be the place where the services were conducted prior to the publication of these books—that is, the chancel.

Change from the quire to the chancel.

What is “accustomed place.”

This undoubtedly is, according to the strict letter of the rubric, the proper place, assuming that the present rubric refers to the time of Edward VI. This, however, is by no means certain; indeed, according to the usual canons of interpretation, it must be construed with reference to the circumstances existing at the time of its promulgation; and if so, by change of time and habits it is possible that in 1662 the “accustomed place” was very different from what it had been a century earlier.

Upon this Wheatley thus observes:<sup>(g)</sup> “Pursuant to this rubric [*i.e.* that in the Second Prayer Book] the Morning and Evening Service was again as formerly read in the chancel or choir; but because in some churches the too great distance of the chancel from the body of the church, occasioned sometimes by the interposition of a belfry, hindered the minister from being heard distinctly by the people, therefore the bishops, at the solicitations of their inferior clergy, allowed them in several places to supersede their former practice, and to have desks or reading pews in the body of the church, where they might with more ease to themselves and greater convenience to the people, perform the daily morning and evening service, which dispensation, begun at

(e) See 2 & 3 Ed. VI. c. 1, s. 1. (f) See 5 & 6 Ed. VI. c. 1, s. 2.

(g) “On the Common Prayer,” pp. 107-8.

first by some few ordinaries and recommended to them by others, grew by degrees to be more general, till at last it became to be an universal practice, insomuch that the Convocation in the beginning of James I.'s reign, ordered that in every church there should be a convenient seat made for the minister to read service in.<sup>(h)</sup> And this being almost threescore years before the restoration of King Charles II. (at which time the last review of the Common Prayer was made), It is very probable that when they continued this rubric, they intended that the desk or reading pew should be understood by the accustomed place for reading prayers. And what makes this more likely, is the rubric [of 1662] at the beginning of the Communion, which expressly mentions a reading pew, and seems to suppose one in every church."

## SECTION II.—*Time of Holding Public Worship.*

Every day.



HERE can be no question that the Laws of the Church require all ecclesiastics to use the Morning and Evening Prayer, publicly or privately, urgent causes apart, every day of the year, and all beneficed ecclesiastics, with the same exceptions, to hold every day public prayer, both morning and evening. In the rubric which follows the exposition "concerning ceremonies," there are the positive commands, first, "All priests and deacons are to say *daily* the Morning and Evening Prayer, either privately or openly, not being let by sickness or some other urgent cause," which plainly applies to every person in holy orders. Secondly, "And the curate that ministereth in every parish church or chapel, being at home and not being otherwise reasonably hindered, shall say the same in the parish church," &c.

Directions of  
the rubrics ;

Doubts have been raised, and are even now not unseldom expressed, as to whether Morning and Evening Prayer ought

(h) *Vide* Canon 82.



daily to be held. But it is scarcely possible to understand the reasoning whence arise such doubts. The above directions are clear, explicit, unqualified. Next, the second section of Charles II.'s Act of Uniformity (*i*), enacts that all "ministers in any cathedral, collegiate, or parish church or chapel, or other place of public worship, shall be bound to say and use the Morning Prayer, Evening Prayer, celebration and administration of both the Sacraments, and all other the public and common prayer in such order and form as is mentioned in the Book of Common Prayer, &c.; and that the Morning and Evening Prayers therein contained shall upon every Lord's Day, and upon *all other days* and occasions, and at the times therein appointed, be openly and solemnly read by all and every minister or curate, in every church, chapel, or other place of public worship."

and of the  
13 & 14 Car.  
II. c. 4.

Again, in addition to the above rubric, it is stated in the notification "Concerning the Service of the Church," that "they, the Fathers, so ordered the matter that the whole Bible, or the greatest part thereof, should be read over once every year, intending thereby that the clergy, and especially such as were ministers in the congregation, should (by often reading and meditation in God's Word) be stirred up to godliness themselves, and be more able to exhort others by wholesome doctrine, and to confute them that were adversaries to the truth; and, further, that the people, by *daily* hearing the Holy Scriptures read in the church, might continually profit more and more in the knowledge of God, and be the more inflamed with the love of His true religion."

Moreover, throughout the Prayer Book, it is constantly implied that the services are held daily. "The Psalter shall be read through once every month as it is there appointed, both for Morning and Evening Prayer," and a portion of the Psalms is appointed for *every day* in the month. The Collects

(*i*) 13 & 14 Car. II. c. 4. See *post*, part iii. c. 1.

“for Grace” and “for Peace” “shall never alter, but *daily* be said at Morning Prayer,” &c. ; and “the Second Collect at Evening Prayer,” and “for Aid against all Perils,” shall be “daily said.” So with the Collect for the First Sunday in Advent until Christmas, and with the Collect for Ash Wednesday during Lent, and in many other instances. The wording, too, of numerous prayers, thanksgivings, &c., is to the same purport.

*Bennett v.  
Bonaker.*

In *Bennett v. Bonaker*, (*j*) the defendant was charged, *inter alia*, specifically with neglect of and irregularity in the performance of divine worship, and in the public services of the Church. Sir John Nicholl, in the course of his judgment, said : “By the general law, the church service, according to the form prescribed in the Book of Common Prayer, is to be regularly performed every Sunday in the morning and evening. If less duty is required, it is to be supposed that the relaxations have been adopted with the approbation of the diocesan, and have been permitted, owing to the circumstances of the parish ; but the minister must strictly adhere to the prescribed terms of such relaxation, and must not vary them at his own pleasure, for his own convenience, and on his own authority. It is the diocesan who is to judge of the degree of relaxation to be allowed.”

Holy days.

*Holy days.* The chief festivals of the Church have special services appointed for use on their anniversaries, and the omission or non-observance of such will, of course, be illegal. With respect to the other holy days and saints’ days, there is no express provision, and the observance of them is left to each person’s discretion. It is, however, unlawful to give notice during service of the occurrence and proposed observance of any fast or festival other than those of which notice is by the rubrics enjoined to be given. (*k*)

(*j*) 2 Hagg. Eccl. 25, 27.

(*k*) *Elphinstone v. Purchas*, L. R. 3 Adm. & Eccl. 66.

The precise hours or times for prayer or the other services are not appointed, and must probably, in case of dispute, be for the ordinary to determine.

Hours for  
prayer.

SECTION III.—*Person by whom Public Worship is to be conducted.*

**T**HE most important provisions relating to the persons conducting divine service are contained in the 35th and 36th Canons. (l) The former provides that no person shall perform any spiritual office, “except he be licensed either by the archbishop or by the bishop of the diocese where he is to be placed, under their hands and seals, or by one of the two Universities, under their seals likewise; and except he shall first subscribe to these three Articles,” *i.e.* of the King’s supremacy, of the truth of the Common Prayer, and of his belief in the Articles. The latter relates to a person licensed by one bishop coming to reside in another diocese, and requires his subscription to the above Article in the presence of the bishop of the latter diocese.

Canons 35 and  
36.

In addition to the above provisions, there is the well-known and inflexible rule of the Ecclesiastical Law, that the incumbent of every district is in a manner supreme in his own district in respect of matters ecclesiastical, and that he can restrain any other person, whether licensed or not, from exercising spiritual offices within his own district. “No doubt can be entertained as to the general principle of the law, where any clergyman attempts to officiate in a church or chapel within the limits of a parish, without the permission of the incumbent. It is not competent for any clergyman of the Church of England to enter a parish, and to officiate in performing the duties of his vocation without leave of the incumbent.” (m)

Incumbent  
supreme in his  
own district.

(l) *Post*, part iii. chap. v.

(m) *Per Dr. Lushington, Williams v. Brown*, 1 Curt. 53. See also

Power of bishop  
to inhibit;

It seems, too, that the consent of the bishop is required, and that therefore a bishop has full power to inhibit a clergyman of another diocese from officiating or preaching in his diocese, though such clergyman has the permission of the incumbent.<sup>(n)</sup>

to grant and  
revoke licenses;

As to the licenses, the Bishop may revoke at his pleasure a license to conduct service in an unconsecrated building,<sup>(o)</sup> and against the exercise of such discretion there is no appeal.<sup>(p)</sup> And he alone can grant them. This was decided in *Smith v. Lovegrove* <sup>(q)</sup>. The question was raised as to the authority of the chancellor of dioceses to grant licenses to lecturers. It was held that such licenses are invalid, and that the bishop has the general superintendence of the clergy within his diocese, and no one without his permission can perform the clerical functions within such dioceses.

and to con-  
secrate without  
consent of the  
incumbent.

The considerations which apply to the licensing of a preacher are somewhat different from those which arise in respect of the consecration of a new place of worship. The former act must be *pro tanto* an interference with the rights of an incumbent. The latter is not necessarily so, since, unless a new ecclesiastical district be created and attached to the new building, the incumbent of the parent church becomes so also of the additional one, and no service may be held there but by his sanction.

The exact point has not yet been decided. In *Carr v. Marsh* <sup>(r)</sup> it was strongly argued, and Sir John Nicholl threw out a dictum, that "a bishop cannot consecrate a chapel without the consent of the incumbent. The building of the chapel may

*Hodgson v. Dillon*, 2 Curt. 388, 392; *Duke of Portland v. Bingham*, 1 Hagg. Cons. 157; *Carr v. Marsh*, 2 Phill. 198; *Molyneux v. Bagshaw*, 9 Jur. (N. S.) 553, as to chaplains in workhouses, *post*, pp. 30-32; *Jones v. Jelf*, 8 L. T. (N. S.) 399, and 26 & 27 Vict. c. 82, as to services in English in Welsh-speaking districts.

<sup>(n)</sup> *Bishop of Down and Connor v. Miller*, 11 Ir. Ch. App. 1; 5 L. T. (N. S.) 30; and see the authorities there cited.

<sup>(o)</sup> *Hodgson v. Dillon*, 2 Curt. 388.

<sup>(p)</sup> *Sedgwick v. Bishop of Manchester*, 38 L. J. Eccl. 30.

<sup>(q)</sup> 2 Lee, 162.

<sup>(r)</sup> 2 Phill. 198, 201.



be a most meritorious act, and the incumbent may be in the wrong, but still he has a legal right."

A question of this kind arose in *Bishop of Winchester v. Rugg*.<sup>(s)</sup> The facts involved were these: Ecchinswell and Sydmonton were formerly two chapelries, and as such formed part of the parish of Kingsclere, but by an Order in Council of the 19th of August, 1852, they were made "into a separate parish for ecclesiastical purposes, and a perpetual curacy and benefice, by the name and style of the Perpetual Curacy of Ecchinswell-cum-Sydmonton;" and Mr. Rugg was, in September, 1852, instituted incumbent thereof. The church of Ecchinswell became the parish church of the newly-formed parish, there being a churchyard annexed to it, and burials, christenings, and marriages having been lawfully celebrated there. Prior to 1849 there had been a chapel in the district of Sydmonton, standing in the private ground of Mr. William Kingsmill. In 1843 a vault was constructed by him underneath the chancel of the chapel. In 1840 the chapel was pulled down, and was rebuilt by him in 1853. There is no consecrated ground annexed to the chapel. There is no register book for burials in the chapel, and no record of any burial ever having taken place therein, the inhabitants of the district having been accustomed to be buried at Kingsclere or Ecchinswell. Disputes arose between Mr. Rugg and Mr. Kingsmill, the son of the founder, as one result of which Mr. Rugg refused or omitted to perform service in the chapel at Sydmonton. Finally a correspondence ensued between Mr. Rugg and the bishop, in which the former maintained that he was not bound to officiate in an unconsecrated church. Early in August, 1865, Mr. Rugg received notice that the bishop intended to consecrate the chapel. Mr. Rugg declared that he would not consent to the consecration, and refused the use of his key for the purpose of opening the door of the

*Bishop of Winchester v. Rugg.*

(s) L. R. 2 Adm. & Eccl. 247; L. R. 2 P. C. 223.

church. The bishop, however, proceeded to perform his duty, and consecrated the church on the 17th of August, 1865.

Consecration  
without the  
consent of the  
incumbent  
valid.

Upon these facts the Dean of Arches held that the chapel had been undoubtedly legally consecrated. "Mr. Rugg maintains that this consecration had no legal effect, and admits he has performed no divine service at Sydmonton on the days laid in the articles, and, as I understand him, for a whole year, dating from the present month. There is no difficulty in deciding that this part of Mr. Rugg's defence is untenable and bad. I have no doubt at all that the church was duly and legally consecrated; that Mr. Rugg, by withholding his consent, in no way affected the legal validity of the act. It is not necessary that I should again advert to the Order in Council, but I listened with surprise to Mr. Rugg's assertion that Sydmonton was unendowed, whereas it is plain that he derives nearly as much income from it as from Ecchinswell. However, the question of the validity of this consecration has been determined by the Privy Council, whose decision is binding upon me. It happened that the consistory of Winchester granted a faculty to Mr. Kingsmill for a vault under the chancel of this chapel. Mr. Rugg opposed this grant, and appealed to the Privy Council from the sentence of the Court of Arches confirming this grant, *Rugg v. Kingsmill*. (t) The Privy Council decided, not only in express terms but by their act, so to speak, that this church was consecrated, for they granted the faculty under conditions to Mr. Kingsmill. Those conditions related to a further consecration of ground adjoining the chapel. It is needless, however, to say to any person acquainted with Ecclesiastical Law, that a faculty cannot be granted for a vault in an unconsecrated building."

(t) L. R. 1 Adm. & Eccl. 343; affirmed by the Privy Council, L. R. 2 P. C. 59.

## CHAPLAINS.

Reference may here be briefly made to the various kinds of Chaplains, chaplains whose recognized existence is, or at least may be, an infringement of the rights of the incumbents within whose districts they may chance to exercise their functions.

Army and Navy Chaplains.—The former have been constituted by the Army Chaplains Act of 1868 (31 & 32 Vict. c. 83). The latter are created either by the exercise of the royal prerogative or in virtue of the common law, it would be difficult to determine which. In the Prayer Book are found “Forms of Prayer to be used at Sea,” which were introduced in 1662, and which are to be used daily.

1. For army and navy.

Chaplains for gaols, (u) for workhouses, (y) for lunatic asylums, (z) and for cemeteries (a) are, like those for the army, entirely of statutory origin, and owe all their rights and immunities to the several Acts of Parliament, in accordance with which they are appointed.

2. For gaols, workhouses, &c.

Private chaplains—that is, those employed by various “privileged” persons—are also an anomalous class. They are usually considered to depend upon 21 Hen. VIII. c. 13, but this statute was abolished by 57 Geo. III. c. 99, and 1 & 2 Vict. c. 106. As, however, it must probably be interpreted as declaratory of the Common Law, its chief provisions as to chaplains are here inserted.

3. Private.

21 Hen. VIII. c. 13.

“Section 13. That all spiritual men now being, or which hereafter shall be of the King’s Council, may purchase License or Dispensation, and take, receive, and keep Three Parsonages or Benefices with Cure of Soul, and that all other, being the

(u) 28 & 29 Vict. c. 126, ss. 10—20, 81; 34 & 35 Vict. c. 46. See also 26 & 27 Vict. c. 79.

(y) 4 & 5 Will. IV. c. 76; *Molyneux v. Bagshaw*, 9 Jur. (N. S.) 553. See 31 & 32 Vict. c. 122.

(z) 16 & 17 Vict. c. 97, ss. 55, 57; 25 & 26 Vict. c. 3, ss. 9, 12.

(a) 10 & 11 Vict. c. 65; 15 & 16 Vict. c. 85, s. 39; 20 & 21 Vict. c. 35, s. 7.

King's Chaplains and not sworn of his Council, the Chaplains of the Queen, Prince, or Princess, or of any of the King's Children, Brethren, Sisters, Uncles, or Aunts, may seemably purchase License or Dispensation, and retain and keep Two Parsonages and Benefices with Cure of Soul.

"Section 14. And likewise, that every Archbishop and Duke may have Six Chaplains, whereof everyone shall and may purchase License or Dispensation, and take, receive, and keep Two Parsonages or Benefices with Cure of Soul.

"Section 15. And that every Marquis and Earl may have Five Chaplains, whereof everyone may purchase License or Dispensation, and take, receive, and keep Two Parsonages or Benefices with Cure of Soul.

"Section 16. And that every Viscount and other Bishop may have Four Chaplains, whereof everyone may purchase License, and receive, have, and keep Two Parsonages or Benefices with Cure of Soul as is aforesaid.

"Section 17. And that the Chancellor of England for the time being, and every Baron and Knight of the Garter, may have Three Chaplains, whereof everyone shall now purchase License or Dispensation, and receive, have, and keep Two Parsonages or Benefices with Cure of Soul.

"Section 18. And that every Duchess, Marchioness, Countess, and Baroness, being Widows, may have Two Chaplains, whereof everyone of them may purchase License or Dispensation to receive, have, and keep Two Benefices with Cure of Soul.

"Section 19. And that the Treasurer and Comptroller of the King's House, the King's Secretary, and Dean of his Chapel, the King's Almshouse, and Master of the Rolls, may have every of them Two Chaplains, and the Chief Justice of the King's Bench One Chaplain, and the Warden of the Five Ports for the time being One Chaplain, whereof everyone may purchase License, and receive, have, and keep Two Parsonages or Benefices with Cure of Soul.

"Section 20. And that the Brethren and Sons of all Temporal



Lords which are born in Wedlock, may every of them purchase License or Dispensation, and receive, have, and keep as many Parsonages or Benefices with Cure as the Chaplains of a Duke or Archbishop.

“Section 21. And likewise the Brethren and Sons born in Wedlock of every Knight, may every of them purchase License or Dispensation, and receive, take, and keep Two Parsonages or Benefices with Cure of Soul.

“Section 22. Provided always, That the said Chaplains so purchasing, taking, receiving, and keeping Benefices with Cure of Soul as is aforesaid, shall be bound to have and exhibit, where need shall be, Letters under the Sign and Seal of the King, or other their Lord and Master, testifying whose Chaplains they be, and else not to enjoy any such Plurality of Benefices by being such Chaplain, anything in this Act notwithstanding.”

#### SECTION IV.—*General Conduct of Public Worship.*

S to the general conduct of public worship, first, “all things shall be read and sung in the English tongue.” (b) But this applies only to public worship, for “when men say Morning and Evening Prayer privately, they may say the same in any language that they themselves do understand.” (c) Moreover, it is expressly provided that the Universities of Oxford and Cambridge, (d) and the Colleges of Westminster, Winchester, and Eton, and the Convocations of either province (e) may use Latin.

In what language.

Next, in the performance of the services, rites, and ceremonies ordered by the Prayer Book, the directions contained in it must be strictly observed; no omission and no addition can be permitted. (f) This is the decision of the highest ecclesiastical court, and the rule so formulated has been (g) and no doubt will

Directions of Prayer Book must be observed.

(b) Rubric; see also the 14th Article of Religion.

(c) See also 2 & 3 Ed. VI. c. 1, s. 5.

(d) 2 & 3 Ed. VI. c. 1, s. 5.

(e) 13 & 14 Car. II. c. 4, s. 8.

(f) *Westerton v. Liddell*, Moore, Special Report, 187.

(g) See *Martin v. Mackonochie*, L. R. 2 P. C. 365.

in future be enforced strictly and literally—that is, in so far as it applies at all. Some matters there are unquestionably, some proceedings in the nature of ceremonies, which the minister may do or abstain from at his pleasure. These will be considered *post* in chapter vi. of this part.

This rule applies equally to the wording of the services as to the rites and ceremonial acts. Thus in *Newbery v. Goodwin*,<sup>(h)</sup> which was a suit against a clergyman for, *inter alia*, irregularities in reading the Holy Scriptures, Sir John Nicholl laid down that “The law directs that a clergyman is not to diminish in any respect or to add to the prescribed form of worship; uniformity in this respect is one of the leading and distinguishing principles of the Church of England: nothing is left to the discretion and fancy of the individual. If every minister were to alter, omit, or add according to his own taste, this uniformity would soon be destroyed, and though the alteration might begin with little things, yet it would soon extend itself to more important changes in the public worship of the Established Church, and even in the scriptures themselves: the most important passages might be materially altered under the notion of giving a more correct version, or omitted altogether as unauthorized interpolations.”

As to those passages of Scripture which are offensive to good taste and feelings of delicacy, such excuse, “though not a legal justification, will greatly extenuate the omission.”<sup>(i)</sup>

Rubrics admit some discretion.

1. Where the priest has discretion.

The rubrics, however, admit a certain amount of discretion. First, the *officiating priest* has discretion in the following instances only. In (1) the number of sentences at the Offertory; in (2) the quantity of bread and wine to be consecrated; in (3) the judgment as to the convenient number of communicants to justify the administration of the holy Communion; in (4) the choice and use of the occasional collects that are inserted after the blessing.

(4) 1 Phill. 282. Compare the fifth charge in *Flamank v. Simpson*, L. R. 1 Adm. & Eccl. 276, 278—“that in saying the last prayer of the morning and evening service Mr. Simpson omits the word ‘all’ in the concluding sentence.”

(i) Per Sir John Nicholl, 1 Phill. 284.

In the first three instances, the uniform custom of the Universal Church, sanctioned by all special statutes, &c., has been, that the superior minister belonging to the church where the Communion Service is performed, whether cathedral or parochial, has a right to administer this service, and consequently to perform those parts in which the discretionary power above mentioned is specified. If an inferior minister officiate, it is by the concession of his superior. The discretionary power here then is regularly exercised by those who have the chief authority in their respective churches.

The fourth instance is the only one where discretionary power is given to an officiating minister, who, generally speaking, is not the principal at Morning and Evening Prayers; minor canons, vicars choral, or chaplains, for the most part officiating at those services.

Secondly, the *curate* (not the *officiating minister*, be it observed) has the discretionary appointment of the time of public baptism. The curate here is not the *curate assistant*, but he who has the principal cure of souls as incumbent. How this may be interpreted with regard to baptism in cathedral churches (to which the inhabitants of the precinct have a right) may be difficult to determine; but in parish churches, the right of the incumbent, even though not resident, to lay down a rule, seems to be recognized.

2. Where the curate has discretion.

The last instance to be mentioned of discretionary power vested in an individual, is that of the *curate* in the choice of the number of children to be catechized by himself on Sundays and holy days.

This, again, is not the officiating minister. The *curate* is directed personally to catechize. Yet perhaps here the rule applies, *qui facit per alium, facit per se*; and though he may have a substitute for this office, still the discretionary direction may rest with him. Reason would seem to prescribe this.

Thirdly, some latitude of choice is given with respect to certain other parts of the service; but the discretionary power is not said to be vested in the officiating minister. The permitted alter-

3. Other cases where discretion is allowed.



natives are (1) the choice of one or more sentences at the beginning of Morning and Evening Prayer; (2) of either Collect for the Queen; (3) of the Psalms at Matrimony; (4) at Burial, (5) and at Churching; (6) of certain occasional prayers and thanksgivings; (7) of one or other Canticle at Morning and Evening Prayer; (8) of the services for the supernumerary Sundays after Trinity; (9) of one or more Psalms in the Burial Service; (10) the Epistles in the Ordination of Deacons; (11, 12) the Epistles and Gospels, and the two versions of the Veni Creator, in the Ordination of Priests and Bishops. These options may surely, without any violation of either the letter or the spirit of the rubric, be regulated by the customs or ordinances of particular churches, or by the authority of the ecclesiastical superiors, or the incumbent. (*j*)

Singing and  
choral service.

*Hutchins v.  
Denziloe and  
Loveland.*

Of the questions relating to the general conduct of worship, two of the chief are those of singing and of a choral service. The former question was carefully considered, and incidentally and indirectly the latter was referred to, by Lord Stowell in *Hutchins v. Denziloe and Loveland*, (*k*) where Lord Stowell held expressly that the former practice, and impliedly that the latter, is perfectly legal, and that they are within the discretion of the ordinary. He said, "In this branch [*i.e.* as to legality or not] of the question I dismiss all consideration of expediency which is in the ordinary himself alone, the Court judges only of the legality. Has then the bishop a discretion upon this subject? Those who have undertaken to show that he has not must show a prohibition which restrains it, and in order to establish this, it is said that though singing part of the psalms is properly practised in cathedrals, it is not so in parish churches. No law has been adduced to this effect, but modern usage alone has been

(*j*) As to the discretion of the minister, and as to the meaning of the words "say" and "sing," in connection with the services, see a learned note by the Rev. John Jebb, printed in Dr. Stephens' edition of the Book of Common Prayer, pp. 541-551.

(*k*) 1 Hagg, Cons. 170, 175-9. See also Jebb "On the Choral Service."



relied on, and it is said that such has been the practice from the time of the Reformation. This, however, is not supported by any particular statement of fact or authority.

“ In the primitive churches the favourite practice of the Christians to sing hymns in alternate verses is expressly mentioned by Pliny in one of his Epistles to the Emperor Trajan. The Church of Rome afterwards refined upon this practice, as it was their policy to make their ministers considerable in the eyes of the common people, and one way of effecting that, was by appointing them sole officers in the public service of the church, and difficult music was introduced, which no one could execute without a regular education of that species. At the Reformation this was one of the grievances complained of by the laity, and it became the distinguishing mark of the Reformers to use plain music, in opposition to the complex musical service of the Catholics. The Lutheran Church, to which the Church of England has more conformed in discipline, retained a choral service. The Calvinistic churches, of which it has sometimes been harshly said that they think to find religion wherever they do not find the Church of Rome, have discarded it entirely, with a strong attachment to plain congregational melody—and that perhaps not always of the most harmonious kind.

Practice of the  
primitive  
Church ;

of the Church  
of Rome ;

of the Re-  
formers ;

“ The reformation of the Church of England—which was conducted by authority, as all reformations should be, if possible, and not merely by popular impulse—retained the choral service in cathedrals and collegiate chapels. There are certainly in modern usage two services to be distinguished ; one, the cathedral service, which is performed by persons who are in a certain degree professors of music, in which others can join only by ear ; the other, in which the service is performed in a plain way and in which all the congregation take nearly an equal part. It has been argued that nothing beyond this ought to be permitted in ordinary parochial service ; it being that which general usage at the present day alone permits. But that

and of the  
Church of Eng-  
land after the  
Reformation.

carries the distinction further than the law will support, for if inquiries go further back to periods more nearly approaching the Reformation, there will be found authority sufficient in point of law and practice to support the use of more music even in a parish church or chapel.

“The first Liturgy was established in the time of Edward VI., in 1548. This was followed, after a lapse of four years, by a second, which was published in the reign of the same king, in 1552; and the third, which is in use at present, agreeing in substance with the former, as ordained and promulged 1 Eliz. in 1559.

Language of  
the statutes of  
Ed. VI.

“It is observable that these statutes of Edward VI., which continue in force, describe even-service as even-song. This is adopted into the statute of the first of Elizabeth. The Liturgy also of Edward VI. describes the singing or saying of even-song; and in the Communion Service, the minister is directed to sing one or more of the sentences at the offertory. The same with regard to the Litany,—that is appointed to be sung. In the present Liturgy, the Psalter is printed, with directions that it should be said or sung, without any distinction of parish churches, or others; and the Rubric also describes the Apostles’ Creed ‘to be sung or said by the minister and people,’ not by the prebendaries, canons, and a band of regular choristers, as in cathedrals, but plainly referring to the service of a parish church. Again, in the Burial Service, part is to be sung by the Minister and people; so also in the Athanasian and Nicene Creeds.

Injunctions of  
Elizabeth.

“The injunctions that were published in 1559 by Queen Elizabeth completely sanction ‘the continuance of singing in the Church,’ distinguishing between the music adapted for cathedral and collegiate churches and parochial churches; also in the Articles, for the administration of Prayer and Sacraments set forth, in the further injunctions of the same Queen, in 1564, the Common Prayer is directed ‘to be said or sung decently and

distinctly in such place as the Ordinary shall think meet for the largeness and straitness of the Church and Choir, so that the people may be most edified.' If, then, chanting was unlawful any where but in cathedrals and colleges, these canons are strangely worded, and are of disputable meaning; but, in order to show they are not liable to such imputation, I shall justify my interpretation of them by a quotation from the '*Reformatio Legum*,' a work of great authority in determining the practice of those times, whatever may be its correctness in matter of law. With respect to parish churches in cities, it is there observed: '*eadem parochiarum in urbibus constitutarum erit omnis ratio, festis et dominicis diebus, quæ prius collegiis et cathedralibus ecclesiis (ut vocant) attributa fuit.*' The metrical version of the Psalms was then not existing, the first publication not taking place till 1562, and it was not regularly annexed to the book of Common Prayer till 1576, after which those Psalms soon became the great favourites of the common people. The introduction of this version made the ancient hymns disrelished; but it cannot be meant that they were entirely superseded; for, under the statutes of the Reformation, and the usage explanatory of them, it is recommended, that the ancient hymns should be used in the Liturgy, or rather that they should be preferred to any others: though certainly to perform them by a select band with complex music, very inartificially applied, as in many of the churches in the country, is a practice not more reconcileable to good taste than to edification. But to sing with plain congregational music is a practice fully authorized, particularly with respect to the concluding part of different portions of the service."

This judgment has been extracted at considerable length, because of the great importance which singing and choral services have in reference to the general conduct of public worship. Other points of a similar description, such as the use of hymns, music, and the like, will be referred to more conveniently in chapter vi. "*Subsidiary Proceedings in the Nature of Ceremonial.*"

Comments of  
Dr. Stephens.

Upon this judgment Dr. Stephens thus comments : (*kk*)—  
“These observations of Sir William Scott must be taken in a qualified sense. It is true that there are no injunctions preventing parish churches from using choral music, but it cannot be said that this plainly refers to parish churches. Where the phrase ‘said or sung’ is used in rubrics, it would seem that reference is here made in the use of the latter words to ‘choirs and places where they sing :’ now at the Reformation very few choirs were left, except in cathedrals or collegiate churches or chapels. In the First Book of King Edward, in the Communion Service clerks are appointed to sing the choral parts, but at the end, just after the Blessing, this rubric occurs : ‘Where there are no clerks there the priest shall say all things appointed here for them to sing.’ Now there were clerks in but few parishes.”

(*kk*) “The Book of Common Prayer,” by A. J. Stephens, p. 122.





CHAPTER III.

THE LITURGIES OF THE CHURCH OF  
ENGLAND.

SECTION I.—*Explication of Terms.*



BEFORE considering the subject of this chapter, it will be convenient to notice some of the leading terms used in connection with it. No legal definitions can be given of these, but those which follow are taken from text-books of

admitted authority.

*Liturgy.* Denotes all the ceremonies in general belonging to divine service. The word comes from the Greek λειτουργία, "service, public ministry," formed from λείτοος, "public," and ἔργον, "work." In the more restrained signification liturgy is used among the Romanists to signify the Mass, and among us, the Common Prayer. (*l*)

*Liturgy.* The form, order, or office, for the celebration and administration of eucharistic sacrifice and sacrament. (*m*)

*Liturgy.* The established formulas for public worship or the entire ritual for public worship in those churches which use prescribed forms.

(*l*) Buck, "Theol. Dict." p. 446; Robinson, "Theol. Dict." p. 626.

(*m*) Blunt, "Theol. Dict." p. 416.

## 2. Service.

*Service.* Stated parts of the ordinary and eucharistic service set to music, as distinguished from those anthems, the words of which are not a matter of settled regulation, and supplemental to the plain-song of the church. The term includes the Versicles before the Psalms, the "Venite," one or more chants for the Psalms, the Te Deum and Canticles, the Dominus Vobiscum, Oremus and lesser Litany pieces, Amens, Litany, and Order of Holy Communion. The term is however sometimes restricted to the Te Deum, the Canticles, and in the Communion Service the Responses to the Commandments, Nicene Creed, and Gloria in Excelsis. (*n*)

## 3. The Litany.

*Litany* [Λιτανεία]. A solemn form of supplication to God. The days appointed by the 15th canon of our church for using the Litany are Wednesday and Friday, to which by the rubric Sundays are added. It forms one office with the Morning Service, being ordered to be read after the 3rd Collect for Grace. (*o*)

*Litany.* A general supplication used in public worship to appease the wrath of the Deity, and to request those blessings a person wants. (*p*)

*Litany.* Solemn public intercession, consisting of five parts, viz. (1) Invocations, (2) Deprecations, (3) Obsecrations, (4) Intercessions, and (5) Versicles and Prayers. (*q*)

## 4. Creed.

*Creed.* Form of words in which the Articles of Faith are comprehended. It is derived from the Latin *credo*, "I believe," with which the Apostles' Creed begins. (*r*)

*Creed.* Though the Scriptures be a perfect revelation of all divine truths necessary to salvation, yet the fundamental articles of our faith are so dispersed there, that it was thought necessary to collect out of those sacred writings one plain and short sum-

(*n*) Lee's "Directorium Anglicanum," p. 295.

(*o*) Broughton's "Hist. Dic." vol. ii. p. 21.

(*p*) Buck's "Theol. Dict." by Henderson, p. 446.

(*q*) Blunt, "Theol. Dict." p. 416.

(*r*) Buck's "Theol. Dict." by Henderson, p. 219.

mary of fundamental doctrines which might be easily understood and remembered by all Christians. (s)

*Collect.* A short prayer accommodated to any particular day, occasion, or the like. (t) 5. *Collect.*

*Collect.* A short prayer formed on definite principles of construction. The most probable interpretation of the name is that it indicates a prayer offered by the priest alone on behalf of the people, whose suffrages are collected in one voice, instead of being said alternately by priest and people in versicles and litanies. (u)

*Collects.* The reason why these prayers are so often called Collects is differently represented. Some ritualists think, because the word *Collect* is sometimes used both in the vulgar Latin Bible (v) and by the ancient fathers (w) to denote the gathering together of the people into religious assemblies; that therefore the prayers are called Collects, as being repeated when the people are collected together. (x) Others think they are so named upon account of their comprehensive brevity; the minister collecting into short forms the petitions of the people, which had before been divided between him and them by versicles and responses, (y) and for this reason God is desired in some of them to "hear the prayers and supplications of the people." Though I think it is very probable that the Collects for Sundays and holy days bear that name, upon account that a great many of them are very evidently collected out of the Epistles and Gospels. (z)

*Versicles.* Ancient introduction to the Psalms. (a)

(s) Wheatley "On the Common Prayer," p. 141.

(t) Buck's "Theol. Dict.," by Henderson, p. 185.

(u) Blunt's "Theol. Dict.," p. 133.

(v) Dies Collectæ, Lev. xxiii. 36; Collectionem, Heb. x. 25.

(w) Collectem celebrare, passim apud Patres.

(x) Alcuin, "Lib. de Divin. Officiis," p. 81.

(y) Walafrid. "Strabo, Lib. de reb. Eccles.," c. 22, p. 407.

(z) Wheatley "On the Common Prayer," p. 154.

(a) Palmer, "Origines Liturgiæ," vol. i. p. 246.

6. Versicles. *Versicles*, or little verses, are probably part of the apostolic ritual. They are used in the name of the church, and the *individual* application of them is subordinate to this chief application of them in the name of the one mystical body. (*b*)
7. Suffrages. *Suffrages*. Prayers in which the people exercise their office as “a chosen generation, a royal priesthood, an holy nation, a peculiar people, that ye should show forth the praises of Him who hath called you out of darkness into His marvellous light.” They are usually sung to a very beautiful form of musical recitation, which has been used for many ages in the Church of England. (*c*)
8. Responses. *Responses*. The answer of the people or congregation to the priest in the Litany and other parts of divine service. (*d*)
9. Priest. *Priest*. General term for a minister of religion. (*e*)  
*Priest*. A person set apart for performance of sacrifice and other offices and ceremonies of religion. (*f*)  
*Priest*. One who belongs to the intermediate order, between a bishop and deacon. He is authorized to perform all ministerial services save ordination and confirmation.
10. Deacon. *Deacon*. Literally, Διάκονος, “a servant, a minister,” had two meanings: (1) In the New Testament—any one who ministers to the service of God; (2) In ecclesiastical polity, the lowest of the different orders of the clergy. They can perform all offices of a priest except consecration of sacramental elements and the pronouncing the Absolution. (*g*)  
*Deacon*. Generally used to signify the third order of the clergy. (*h*)
11. Acolyte. *Acolyte*. The term Ἀκόλουθοι signifies followers, and was a term applied to young persons who in primitive times aspired to the ministry, and for that purpose continually attended the bishop. (*i*)

(*b*) Blunt's “Key to the Prayer Book,” p. 30.(*c*) *Ibid.* p. 40.(*d*) Wheatley “On the Common Prayer,” p. 114.(*e*) Robinson, “Theol. Dict.” p. 821. (*f*) Buck's “Theol. Dict.” p. 643.(*g*) *Ibid.* p. 230. (*h*) Robinson, “Theol. Dict.” p. 341. (*i*) *Ibid.* p. 28.



*Acolytes.* Servants of the church. Their office was to light candles; carry tapers in festal processions; to present the wine and water at the Supper, and in general to assist the bishops and priests in the performance of ceremonies. They belonged to the clergy, and had rank immediately below the sub-deacons. (*k*)

*Acolyth.* The name of the first of the four lesser orders, so called because it is the duty of the acolyth to serve those who celebrate the holy office. Their office it was to light the candles, and to pour the wine intended to be consecrated into proper vessels, on which account the archdeacon, at their ordination, presented them with a candlestick and chalice. They also waited upon the bishops and their officers, in presenting to them the sacerdotal vestments; and accompanying the bishop everywhere, acted as witnesses of his conduct, carried his messages as well as the Eulogiæ, and even the Blessed Sacrament itself. At present, their duties are to attend upon the deacon and sub-deacon at the altar; to make ready the wine and water at Mass; to carry the thurible; and to light and carry the candles especially at the chanting of the Gospel. (*l*)

## SECTION II.—*History of the Liturgies.*

 HE history of the Book of Common Prayer, in so far as it affects the subjects herein treated of, may be said to commence with the accession of Edward VI. This took place on the 28th of January, 1547. In July ensuing twelve homilies were published, and following these, the Old and New Testaments, the Paraphrase of Erasmus on the Gospels and the Acts of the Apostles were translated into English, and the government directed one copy of these translations to be placed in every parish church.

Edward VI.

(*k*) Buck, "Theol. Dict." by Henderson, p. 9.

(*l*) Landon, "Eccles. Dict." vol. i. p. 70.

Injunctions of  
Edward VI.

The council immediately took active steps for completing and effectuating the ecclesiastical innovations, usually styled the Reformation, that had been left unfinished by the late king. In or about the same month, *i.e.* July, 1547, were issued the well-known Injunctions. These are substantially a repetition of, and no doubt were taken almost bodily from, those that had been ordered by Henry VIII. when Cromwell was Vicar-general, but with considerable additions thereto. They were issued by "the King's most royal majesty, by the advice of his most dear uncle, the Duke of Somerset, Lord Protector of all his realms, dominions, and subjects, and governors of his most royal person, and the residue of his most honourable Privy Council." These are of very great interest in an historical point of view, as illustrating the course of events; but what at the period of their promulgation was, and what now is, their exact legal force, or their import in other respects as ecclesiastical constitutions, remain still doubtful points. To determine their original, and indeed their present value, it is necessary to determine in the first place the precise circumstances under which the issue of them took place.

Their legal  
import is  
doubtful.

How issued:  
either by the  
Council of  
Regency;

This might have been either by the Council of Regency, acting as such and in virtue of the powers given them by the will of Henry VIII.; or by the government of Edward VI., whether the Council of Regency or the Privy Council, acting in accordance with the authority expressly created in that behalf by the Proclamation Act of Henry VIII., (*m*) which enacts that "the King for the time being, with the advice of his council, or the more part of them, may set forth Proclamations under such Penalties and pains as to him and them shall seem necessary, which shall be observed as though they were made by Act of Parliament; but this shall not be prejudicial to any person's inheritance, Offices, Liberties, Goods, Chattels or life, and whosoever shall willingly offend any article contained

in the said Proclamations, shall pay such Forfeiture or be so long imprisoned, as shall be expressed in the said Proclamations, and if any offending will part the Realm, to the Intent he will not answer the said offence, he shall be adjudged a traitor."

The latter seems to be the more probable account. Burnet was of this opinion:—"In the Act of Parliament which Henry had procured for giving force and authority to his proclamations, (*n*) a proviso was added that his son's councillors, while he should be under age, might set out proclamations of the same authority with those which were made by the King himself. This gave them a full power to proceed in that work; in which they resolved to follow the method begun by the late kings of sending visitors over England with injunctions and articles . . . They next considered the articles and injunctions that should be given to visitors. The greatest part of them were only the renewing what had been ordered by King Henry during Cromwell's being vicegerent." (*o*)

or by the  
government of  
Edward VI.  
Opinion of  
Burnet;

And both Sir John Dodson, in *Westerton v. Liddell*, (*p*) and the present learned Dean of Arches, have after very careful consideration, come to the same conclusion. In *Martin v. Mackonochie*, (*q*) Sir Robert Phillimore said:—"I am of opinion that the operation of this statute of Edward VI. (*r*) must be confined within the limits which I have stated, and that it has not repealed any power to issue royal injunctions which Henry VIII. derived, either from the Supremacy or the Proclamation Statute.

of Sir John  
Dodson;

and of Sir  
Robert Philli-  
more.

"The legal authority of these Injunctions of Edward VI.

Opinions  
expressed in

(*n*) 31 Hen. VIII. c. 8.

(*o*) Burnet, "History of the Reformation," vol. ii. pp. 55, 56.

(*p*) Moore, Special Report, both when before Sir John Dodson and in the Privy Council.

(*q*) L. R. 2 Adm. & Eccl. pp. 229-231.

(*r*) Viz. 1 Ed. VI. c. 12.

*Westerton v.*  
*Liddell* by Dr.  
Lushington ;

was discussed in the *Westerton v. Liddell* cases. The judge of the Consistory of London held that the burden of proving their legal authority lay upon those who asserted it, and that the burden had not been discharged, and he treated the Injunctions as valid ; and on that ground among others decided that the ‘cross’ was not a lawful ornament of the Church.

by Sir John  
Dodson ;

“The Court of Arches, however, held that Edward VI. had power to issue these Injunctions under the authority of the Proclamation Act, 31 Hen. VIII. c. 8, and the learned judge decided that the cross was an illegal ornament, because it was forbidden under the name of an ‘image,’ by these very Injunctions of Edward VI.

by the Privy  
Council.

“When the case of *Westerton v. Liddell* was appealed to the Judicial Committee of the Privy Council, they decided that the cross was a lawful ornament, and that it was not an ‘image’ forbidden by these Injunctions.

“In arriving at this conclusion, they certainly treated the Injunctions as valid, whether or not they agreed with Sir John Dodson’s opinion that their validity was derived from the powers conferred on the Crown by the Proclamation Act ; and referring to the 28th section of these very Injunctions, they say, ‘The section could not mean that all candlesticks should be removed from churches, for two were to be retained’ (namely, by the 3rd section), ‘on the high altar.’

“If this be so, their decision is binding upon me, and the general question as to the legal validity of these Injunctions, has been decided in the affirmative. It may be as well, however, to look a little more closely into this question.

“It has been argued that these Injunctions were not lawfully issued under the Proclamation Act, because it related only to temporal and not to spiritual matters, and also because the orders which it prescribed for the preparation and issue of instruments under its authority were indispensable conditions, and had not been complied with.



“ Mr. Stephens in his argument upon the subject laid down four propositions : First, if these Injunctions were issued under the Proclamation Acts, nevertheless, upon the repeal of those acts in November, 1547, they were not in force by the authority of Parliament in the second year of Edward VI. Secondly, if they were intended to be issued under the Proclamation Acts of Henry VIII. they were not issued in accordance with their provisions, first, because there is no time limited during which the Injunctions were to continue in force ; secondly, because the copies of those Injunctions which were printed and circulated were not signed by thirteen members of the King’s council, as required by 31 Hen. VIII. c. 8, and there is no evidence of their having been proclaimed in accordance with the third section of that statute. Thirdly, that instead of the punishment by fine and imprisonment which the council, under section 4 of 31 Hen. VIII. c. 8, were empowered to inflict, the Injunctions of 1547 only threatened ecclesiastical punishments, which the council had no power to inflict under the Proclamation Act, and those ecclesiastical punishments are to be inflicted by the ordinary, and not by the thirteen members of the King’s council. Fourthly, it appears from the earliest historians of the Reformation, Fox, Fuller, and Heylin, that the Injunctions were not issued under the Proclamation Act, but by virtue of the King’s supremacy.”

These propositions the learned judge considered in order, and from each of them he expressed his dissent.

The arguments against the validity of these Injunctions fall under two heads, either, first, they were not of legal force when issued, or, secondly, by the result of subsequent legislation they ceased to have any force. The arguments for and against which come under the former head have been sufficiently dealt with and examined in the extract from the judgment of Sir Robert Phillimore just given. To this it may be added that in *Westerton v. Liddell*, as above remarked, the Privy Council

Arguments  
against the vali-  
dity of Ed. VI.’s  
Injunctions.  
1. They were  
not binding  
when issued.

apparently, and in an indirect manner, recognized the legality of these Injunctions, but in *Martin v. Mackonochie* they seem disposed to dispute this. (s)

2. Or they have since been abrogated.

Assuming that they were of legal force when first set forth, the second question is, how long did and do they now continue so? The solution of this depends partly upon the effect of the statute 1 Ed. VI. c. 12, but mainly upon the construction to be given to the 27th section of 1 Eliz. c. 2.

1 Ed. VI. c. 12, s. 2;

The former statute enacted (t) "that all Acts of Parliament and statutes touching, mentioning, or in any wise concerning Religion or Opinions, that is to say, as well the Statute made in the fifth year of the Reign of the King's noble Progenitor, King Richard II. and the Statute made in the second year of the Reign of King Henry V. and the Statute also made in the twenty-fifth year of the Reign of King Henry VIII. concerning punishment and Reformation of hereticks and lollards, and every provision therein contained, and the statute made for the Abolishment of Diversity of Opinions in certain Articles concerning Christian Religion, commonly called the Six Articles, made in the Parliament begun at Westminster, 28th April, in the thirty-first year of the Reign of the most noble and victorious Prince of most famous memory, King Henry VIII.," and various other statutes which are there specially named, "and all and every other Act or Acts of Parliament concerning Doctrine or Matters of Religion; and all and every Branch Article, Sentence and Matter, Pains and Forfeitures contained, mentioned, or in any wise declared in any of the same Acts of Parliament or Statutes shall from henceforth be repealed, and utterly void, and of none effect."

effect of.

This enactment, if taken in its widest signification, would abrogate the principal statutes passed during the reign of Henry VIII. for establishing the independence of the Church of England. Manifestly this was not its intent. Its object probably

(s) See L. R. 2 P. C. pp. 365, 387-9. (t) 1 Ed. VI. c. 12, s. 2.

was to repeal the laws which inflicted severe punishments and penalties, imprisonment, fine, and death, on account of opinions entertained "concerning doctrine or matters of religion," such as had been enforced in the reigns of Richard II. Henry V. and Henry VIII. against heretics of various kinds.

This was the purpose assigned to it by Sir Robert Phillimore in *Martin v. Mackonochie*, who accordingly held (*u*) "that it has not lessened the power which the sovereign may have, by supremacy or otherwise, to issue Injunctions of the kind in question."

The 27th section of 1 Eliz. c. 2, is as follows:—"And be it further enacted by the authority aforesaid that all laws, statutes, and ordinances wherein or whereby any other service, administration of sacraments, or common prayer is limited, established, or set forth to be used within this realm, or any other the Queen's dominions or countries, shall from henceforth be utterly void and of none effect." It was made perpetual by 5 Anne, c. 5, as to the establishment of the church.

1 Eliz. c. 2,  
s. 27.

As to the effect which this statute has had upon Edward VI.'s Injunctions, the Privy Council have laid down that "without stopping at this place to inquire into the nature of the authority under which the Injunctions of 1547 were issued, their lordships are clearly of opinion that the Injunction in question, so far as it could be taken to authorize the use of lights as a ceremony or ceremonial act, was abrogated or repealed by the Act, 1 Eliz. c. 2, particularly by s. 27, already mentioned, and by the present Prayer Book and Act of Uniformity, and that the use of lighted candles, viewed as a ceremony or ceremonial act, can derive no warrant from that Injunction." (*uu*)

Perhaps, as a conclusion, it may be stated that the Injunctions of Edward VI. were at their origin of legal force; that by 1 Eliz. c. 2, such of them, and only such, as were inconsistent with the directions contained in the Prayer Book sanc-

Conclusion as  
to the Injunctions.

(*u*) See *ante*, p. 47.

(*uu*) L. R. 2 P. C. 389.

tioned by that statute, or with the statute itself, were repealed ; that 13 Car. II. c. 4, abolished similarly those of them, if any, which were opposed to the Prayer Book, viz. the present one, sanctioned by it ; and that therefore the remainder, viz. all such as have not been abolished by either of these two Acts of Uniformity, remain in force.

Royal visita-  
tion of Sept.  
1547.

On May the 4th in the year 1547 a letter was sent in the King's name to all the episcopal bench, stating that a royal visitation of the cathedrals and churches was intended, and commanding them meanwhile to abstain from their own visitations and the exercise of their ecclesiastical jurisdiction. The operation of this visitation was, however, suspended till September, when it was fully and systematically carried out. The realm was divided into six districts or circuits, to visit each of which a commission was appointed, consisting of two or more gentlemen—a civilian, a registrar, and at least one of the ablest divines and preachers that could be found, who was to instruct the people and facilitate the work of the commissioners. These visitors, though principally laymen, were armed with strong and extensive powers, being authorized to visit both the clergy and laity, to examine licenses, faculties, endowments, and titles, to inquire into the practices of the spiritual courts, and even to inspect every part of the episcopal function. They carried with them books of the Homilies, one of which was left with each parish priest to be read to the people, that they might not forget or be diverted from what they had been taught by the preacher who accompanied the commission. They likewise took with them and delivered copies of the royal injunctions and of the articles to be inquired of at the King's visitation. (x)

Assembling of  
Parliament in  
Nov. 1547.

Parliament assembled on November 4, and it passed two important laws. Chapter I. directed the Sacrament to be administered in both kinds, as being agreeable to primitive use, and provided for the punishment of those who reviled or spoke

(x) 1 Shepherd "On the Common Prayer," xxix. xxx.



contemptuously of this rite. This statute deserves attentive notice, as containing in the first section a careful recital of the origin of the sacrament, "commonly called the Sacrament of the Altar, and in Scripture the Supper and Table of the Lord." (y) Chapter 2 ordained that the appointment of bishops should be by letters patent.

In February, 1548, proclamations were issued against various ceremonies, such as the carrying of ashes on Ash Wednesday and for the removal of images. Proclamations of Feb. and March, 1548.

On the 8th of March a proclamation in the King's name appointed for general use "The Order for the Communion," which is set out in the fourth section of this chapter. As will be manifest by the perusal, it is a compromise between the old and newer state of things. "Order for the Communion."

This "Order for the Communion" had been drawn up by a committee of bishops and divines. These, somewhat reduced in number, were directed by the council to examine next the other services of the church, with a view to their amendment and to the preparation of one general public Liturgy. They did so, and the result of their labours was the first Prayer Book of Edward VI. This Book, it was enacted by the Act of Uniformity of 1549, (z) was alone to be used after the Feast of Pentecost next ensuing. First Prayer Book.

By other statutes in the same session abstinence from flesh was ordained, not as a religious matter, but as healthful, and also to employ fishermen, (a) and the marriage of priests was allowed. (b) First Session of 1549.

In the next session of this parliament, which met in November, 1549, was passed the "Act for Abolishing and Putting Away of divers Books and Images," (c) which directed that the various Second Session of 1549.

(y) It was repealed by 1 Mar. sess. 2, c. 2, and revived by 1 Eliz. c. 1, s. 14.

(z) 2 & 3 Ed. VI. c. 1, given *in extenso*, *post*, part iii. chap. i. It passed the House of Lords on Jan. 29.

(a) 2 & 3 Ed. VI. c. 19.

(b) *Ibid.* c. 21.

(c) 3 & 4 Ed. VI. c. 10.

missals, grails, and other books in use in the Romish worship should be destroyed, and that superstitious images should be taken away from churches.

The Ordination Service.

In the year following, as the Prayer Book was without a form for the consecration of bishops, priests, and deacons, the commissioners who had compiled the Prayer Book drew up a service for this. (*d*) It was sanctioned by the Statute 3 & 4 Ed. VI. c. 12. This statute is commonly considered to have expired, but possibly it was revived by the effect of 2 Jac. I. c. 25, s. 48, repealing 1 Mar. sess. 2, c. 2.

42 Articles.

Early in 1552 were promulgated the Forty-two Articles. They had been agreed upon in convocation, but were never confirmed by the legislature. (*e*)

### THE FIRST PRAYER BOOK.

Differences between Prayer Book of 1549 and the present one.

The principal differences between the Prayer Book that was issued under this statute and the one that is now in use under stat. 13 & 14 Car. II. c. 4, are as follows:—

1. The Morning and Evening Service began with the Lord's Prayer; and the prayers for the King, royal family, and clergy, &c., were wanting at the end of it. The Litany was not ordered to be used on Sundays, and contained a petition to be delivered from the tyranny of the Bishop of Rome.

2. Each Communion Service began with an introit, or psalm, sung as the officiating ministers were proceeding to the altar, a custom resembling that which is now observed in cathedral churches. In the praise given for the saints, the name of the Virgin was especially mentioned. The sign of the cross was used in the consecration of the elements; and there was a prayer for sanctification with the Spirit and Word of God. The words at the delivery of the elements were only the first clause of those now used; and water was to be mixed with the wine. This

(*d*) Published in Mason's "Vindication," &c. and in the "Liturgies of King Edward VI." (Parker Society), p. 159.

(*e*) They are given *post*, part iii, chapter iv, where the circumstances relating to their compilation are narrated.

service varied much from the one at present in use, and the Decalogue formed no part of it.

3. In the Baptismal Service, a form of exorcism, in order to expel the evil spirit from the child, was still used. The child was anointed, and invested with a white garment or chrisom, to denote the innocency of the profession into which it was now admitted. The baptismal water was consecrated once a month, and the minister was directed to dip the child thrice.

4. The Catechism formed a part of the Office for Confirmation, and wanted the explanation of the sacraments at the end.

5. The Office for Confirmation consisted merely in the laying on of hands with prayers, without any promise on the part of the persons confirmed, with which it now begins. The sign of the cross was still used in it.

6. In Matrimony the sign of the cross was still retained, and money was given with the ring to the bride.

7. In the Visitation of the Sick allusion was made from the Apocrypha to Tobias and Sara. A prayer was added in case the sick person desired to be anointed, and he was then to be signed with the cross. And it was further directed that the same form of absolution then used should be used in all private confessions.

8. In the Burial of the Dead, there were prayers for the person buried and for the dead generally. A particular service was added for the celebration of the Eucharist at funerals.

9. With regard to dresses, priests were ordered to wear the surplice in parish churches, and to add the hood when they officiated in cathedrals and colleges, or preached. And in the Communion the bishop was directed to wear, beside his rochet, a surplice or alb, with a cope or vestment, and to have a pastoral staff borne by himself or his chaplain. The officiating priest was to wear a white alb, plain, with a vestment or cope. And the assisting ministers were to appear in albs with tunicles.

The First Prayer Book had scarcely been promulgated, than the more advanced reformers began to object to some of its

Cry of Roman-  
ism imme-  
diately follows

promulgation  
of First Prayer  
Book.

teachings and practices, as savouring too much of Romanist notions, and to agitate for further changes. In consequence a new commission was appointed—or more probably the first one was continued—with directions to again and further revise the services. The two chief matters of contention were—as indeed they always have been—the use of vestments and the nature of the Communion Service. As to vestments, it will appear upon an examination of the rubrics, that different robes were enjoined for the different services, and that from their texture and colour they made a near approach to the existing Romish habiliments. As to the Lord's Supper, the first Prayer Book treated this as a sacrament rather than a rite, and the reforming party both in England and upon the Continent, though differing widely in their own views of the true nature and significance of the ceremony, were united in repudiating any proceedings, whether of word or act, which approached to Romanism.

Second Prayer  
Book of Edward  
VI.

The revision was completed about the end of 1551, and the statute 5 & 6 Ed. VI. c. 1, passed in April next year, enacted that the book so revised, the Second Prayer Book, should alone be used after the feast of All Saints next ensuing, in lieu of the first book. On the 27th of October, by an Order in Council, was issued a protestation “touching the kneeling at the receiving of the Communion,” which was directed to be subjoined to the Communion Service. It is of course not found in the copies some still in existence, printed before that day; and not having been legally sanctioned in any way, it was omitted from Elizabeth's Prayer Book of 1559. The commissioners of 1661, however, inserted it, slightly modified in language, at the final revision of the Prayer Book.

#### THE SECOND PRAYER BOOK.

Differences be-  
tween the First  
and Second  
Prayer Book.

The chief points in which the Second Book of Edward VI. differs from the First are the following:—The Sentences,



Exhortations, Confessions, and Absolution were now first appointed to be read in the beginning of Morning and Evening Prayer. The versicles after the Lord's Prayer were put in the plural number, and Allelujah appointed in the former Book to be said from Easter to Trinity Sunday was omitted. Some psalms after the Lessons, some occasional prayers at the end of the Litany, and various rubrics were added.

The Litany was now first removed from the end of the Communion Service, and appointed to be used on Sunday, as well as on Wednesday and Friday.

Other material alterations consisted in the removal of a few ceremonies and usages retained in the First Book, some of which appear to have been at least superfluous. Such, in the Office of Baptism, were the sign of the cross made on the child's breast, the Exorcism, or the Form of Abjuration, commanding the unclean and cursed spirit to depart; the repetition of immersion, first dipping the right side, then the left, then the face towards the font; the putting upon the child his (or her) white vesture, commonly called the chrisom, with the address to the child on the occasion; and the anointing of the child, with the prayer for the unction of the Holy Spirit. Such, likewise, were the sign of the cross in Confirmation, and extreme unction at the Visitation of the Sick. In the Churching of Women, the part of the last rubric concerning the chrisom was omitted, and the former title, Purification of Women, was abandoned. Prayers for the dead, both in the Communion and Burial Service, were expunged.

The order of the Communion Office in general was much altered, and the arrangement of some parts of it was changed.

In very ancient Liturgies, there was a psalm or some other part of Scripture appropriate to the service of the day, prefixed to the Collect, before the Epistle and Gospel. This being sung by the choir at the time of the priest's approach to the altar, was in some churches called the Ingress (*Ingressus*),

but, more commonly, the Introit (*Introitus*). It is found in the First, but is omitted from the Second Prayer Book. (*f*)

Acts 5 & 6 Ed.  
VI. cc. 3, 4, 12.

In the same year, *i. e.* 1552, were passed the Acts 5 & 6 Ed. VI. c. 3, "For the keeping Holy-Days and Fasting-Days (*g*); 5 & 6 Ed. VI. c. 4, "Against Quarrelling and Fighting in Churches and Church-Yards" (*h*); and 5 & 6 Ed. VI. c. 12, "Touching the Declaration of a Statute made for the Marriage of Priests and for the Legitimation of their Children," (*i*) "An Act to take away all positive Laws against the Marriage of Priests." According to the recital in the declaratory statute, "Since the making of the said Act diuers evil disposed persons, perversely taking occasion of certain words and sentences in the same Act comprised, have and do untruly and very slanderously report of priests' matrimony, saying" that the children born thereof were bastards. Therefore it was expressly declared that such marriages were good, and the children born thereof legitimate to all intents and purposes. Both Acts were repealed by 1 Mar. sess. 2, c. 2, and, owing to Elizabeth's well-known hostility to the marriage of divines during the whole of her reign, Mary's statute remained in force, and the validity of such marriages, therefore, depended upon the provisions of Hen. VIII. and the old Common Law. However, by 1 Jac. I. c. 25, s. 50, Mary's statute was repealed, and those of Edward VI. were revived and made perpetual.

Marriage of  
priests.

Mary.

No notice need be taken of Mary's reign other than to mention the statute 1 Mar. sess. 2, c. 2, which repealed several religious statutes, including all those already cited, and which was itself abrogated in part by 1 Eliz. c. 2, and wholly so by 1 Jac. I. c. 25, s. 48.

Elizabeth.

Elizabeth succeeded on the 17th of November 1558. On the

(*f*) See generally "The Book of Common Prayer," by Dr. Stephens, Preface, 79-80.

(*g*) Printed *in extenso*, *post*, part iii. chap. ii.

(*h*) *Ibid.*

(*i*) The statute referred to in this title is 2 & 3 Ed. VI. c. 21.

27th of the next month she issued a temporising proclamation, half Romanist, half Reformatory, commanding persons to cease from religious disputes until the meeting of parliament. This occurred January 21st, 1558-9. Immediately was passed 1 Eliz. c. 1, commonly styled the "Act of Supremacy," (*k*) "to restore to the Crown the ancient Jurisdiction over the Estate Ecclesiastical and Spiritual, and abolishing all Foreign Powers repugnant to the same."

Act of Supremacy of 1559.

A new edition of the Prayer Book was prepared, and a bill was introduced into parliament "for the Uniformity of Common Prayer in the Church and Administration of the Sacraments," to sanction its use. The measure met with strenuous opposition, and did not get through the House of Lords till the 28th of April, nearly three months after its introduction into the Commons. (*l*) Even when finally it passed it was "with the assent of the lords and commons," (*m*) the "lords spiritual" being left out, as the bishops without exception voted against it. It directed that the revised book should alone be used in public worship "from and after the feast of the Nativity of St. John Baptist next ensuing," and it contained rather severe penalties for securing the due observance of it.

New edition of the Prayer Book.

Act of Uniformity of 1559.

### THE PRAYER BOOK OF 1559.

The chief differences between this book and the second of Edward VI. were thus noted by Archbishop Parker, (*n*) who, by mistake, says it was Whitgift who drew up the document.

Differences between Elizabeth and Edward VI.'s Second Prayer Book.

"1. King Edward his second book differeth from her Majesty's book in the first rubric, set down in the beginning of the book; for King Edward's second book hath it thus:—

"'The Morning and Evening Prayer shall be used in such

(*k*) In *Caudrey's Case*, 5 Rep. 1, 8, it is laid down that this is not a statute introductory of any new law but simply declaratory of the old, and that the sovereign has by virtue of his prerogative full authority and jurisdiction in matters ecclesiastical as in civil.

(*l*) 1 Eliz. c. 2, printed *in extenso*, *post*, part iii. chap. i.

(*m*) 1 Eliz. c. 2, s. 3.

(*n*) Strype, Ann. part i. p. 123.

place of the church, chapel, or chancel, and the minister shall turn him, as the people may best hear. And if there be any controversy therein, the matter shall be referred to the ordinary, and he or his deputy shall appoint the place. And the,' &c.

“Whereas the Queen's book hath it thus :

“ ‘The Morning and Evening Prayer shall be used in the accustomed place of the church, chapel, or chancel, except it shall be otherwise determined by the ordinary of the place. And the chancels shall remain as they have done in times past.’

“Again, King Edward's second book hath it thus :

“ ‘Again, here is to be noted that the minister at the time of the Communion, and at all other times in his ministration, shall use neither alb, vestment, nor cope ; but being archbishop or bishop, shall have and wear a rochet ; and being a priest or deacon, he shall have and wear a surplice only.’

“The Queen's book hath it :

“ ‘And here it is to be noted, that the minister at the time of the Communion, and at all other times in his ministration, shall use such ornaments in the church as were in use by authority of Parliament in the second year in the reign of King Edward VI., according to the Act of Parliament set forth in the beginning of this book.’

“2. In King Edward's second book, in the Litany are these words : ‘From the tyranny of the Bishop of Rome and all his detestable enormities,’ which are not in her Majesty's book.

“3. In the Litany her Majesty's book hath these words more than are in King Edward's second book, viz. : ‘Strengthen in the true worshipping of Thee, in righteousness and true holiness of life.’

“4. In the end of the Litany there is no prayer in King Edward's second book for the King nor for the state of the clergy. And the last collect set in her Majesty's book next



before the First Sunday in Advent, and beginning, 'O God, whose nature and property is ever to have mercy,' is not in King Edward's second book. Further, there are two collects appointed for the time of dearth and famine, whereas her Majesty's book hath but one. But in King Edward's second book this note is given of the prayer of St. Chrysostom, 'The Litany shall ever end with this collect following,' which note is not in her Majesty's book.

"5. King Edward's second book appointed only these words to be used when the bread is delivered at the Communion: 'Take and eat this in remembrance that Christ died for thee, and feed on Him in thine heart by faith with thanksgiving.' And when the cup is delivered, 'Drink this in remembrance that Christ's blood was shed for thee, and be thankful.' Whereas in her Majesty's book, at the delivering of the bread these words must be said, 'The body of our Lord Jesus Christ, which was given for thee, preserve thy body and soul unto everlasting life. Take and eat this,' &c.; and at the delivery of the cup these words, 'The blood of our Lord Jesus Christ, which was shed for thee, preserve thy body and soul unto everlasting life. Drink this,' &c."

Dr. Cardwell states, "that besides the alterations noticed in this list of Archbishop Whitgift [Parker], there were several changes made in the calendar, such as the appointment of proper lessons for Sundays as well as for several holydays, for there were previously Epistles and Gospels, but no proper lessons."

The Act describes the Book in these terms: "The said book 1 Eliz. c. 2, s. 3.  
so authorized by Parliament in the said 5th and 6th years of the reign of King Edward VI., with one alteration or addition of certain lessons to be used on every Sunday in the year, and the form of the Litany altered and corrected, and two sentences only added in the delivery of the sacrament to the communicants, and none other or otherwise." It is manifest from the list of

differences above given, that the Book referred to by Archbishop Parker is not the one, *verbatim et literatim*, authorized by the Act, and it would seem that no copy exists, perhaps none ever existed, corresponding in all points to the Book so put forth. (*o*) The copy which answers most closely to the above description is that from which the reprint of the Parker Society was made. (*p*) The original bears the impress of Jugge and Cawode, and must have been published early in 1559, probably concurrently with the passing of the statute.

Folio series of  
Prayer Books  
for clergy.

Very shortly afterwards, in the same year, another series of Prayer Books was printed in folio, designed more especially for the use of the clergy. These have usually been considered to constitute the first and only edition of the Book as revised in accordance with the Act. But it will probably be more accurate to style them the second edition, inasmuch as they go farther than the copy above mentioned from the Book of 1549. Some of these alterations were no doubt intentional and directed by persons in authority, but others must have been caused by the careless printing, which at all times has in a most extraordinary manner been incidental to the issue of the Common Prayer.

Further altera-  
tions.

Even now, however, the text, though apparently settled, was not so in reality. "First, it again underwent alteration by the authorized substitution of the New Calendar; (*q*) then by a change of lessons (typographical errors perpetuated), for the evenings on the fifth Sunday after Trinity, St. James's Day, and the 21st of May; also by a modification of the collect for St. Mark's Day; and lastly, by various verbal alterations,' made not later than 1572. (*r*)

James I.

No other matters requiring note occurred during the rest of Elizabeth's reign. In January, 1604, was held the celebrated

(*o*) See "Liturgies of Eliz." (Parker Soc.) by W. K. Clay, B. D. pp. xii.-xiv

(*p*) See last note.

(*q*) Strype's Whitgift, App. p. 80.

(*r*) "Liturgies of Eliz." (Parker Soc.), by W. K. Clay, B. D. Preface, xv

Hampton Court Conference, between the leading divines, Church and Puritan. It was a well-meant, but fruitless endeavour to effect a compromise between the two parties. A few alterations, however, were made in the Liturgy, and approved of by the King; but they had no legal effect, as they were not confirmed by Parliament. In the rubric before the Absolution, the words, "or remission of sins" were added, "by way of explanation." In the Morning and Evening Prayer a collect, and in the Litany a particular intercession, were appointed for the Royal Family. At the end of the Litany were added forms of Thanksgivings on various occasions; for rain, and for fair weather; for plenty, and for peace and victory, and two for deliverance from the plague. In the Gospel of the Second Sunday after Easter, the words, "Christ said to his disciples," were changed to "Christ said," and in the Gospel to the Twentieth Sunday after Trinity, "Jesus said to his disciples," were changed to "Jesus said," which words were also now printed in a different letter, to show that they were not to be found in the original text. In the office for Private Baptism, the rubric, which might have been supposed to countenance lay baptism, was corrected, and the administration confined to the lawful minister. The title of the Office of Confirmation then ran, "The order of Confirmation, or laying on of hands upon children baptized and able to render an account of their faith according to the Catechism following." The doctrine of the two sacraments was added to the Catechism. Some few changes were made in the lessons taken from the Apocrypha.

Hampton Court Conference.

Alterations made by it in the Liturgy.

The next stage in the History of the Formularies of Public Worship is the Restoration of Charles II. and the events consequent thereupon. On the 25th of March, 1661, the King issued a Commission to the leading men, Episcopalian and Nonconformist, "to advise upon and review the said Book of Common Prayer, comparing the same with the most ancient Liturgies which have been used in the Church in the primitive and purest times."

Restoration of Charles II.

His Commission.

Savoy Confer-  
ences.

Accordingly, from April till July, 1661, conferences took place at the Savoy, but as neither party would yield to the other, the deliberations were useless in so far as concerned the direct object proposed.

Convocation of  
1661.

Convocation assembled on May the 8th, 1661. They first drew up a Form of Prayer for the 29th of May. At their next session in November, they devoted their attention to the then Book of Common Prayer, with a view to its revision.

Alterations  
made by.

Various alterations were made therein, but all of them of small import, many being merely verbal, and few were doctrinal.

Change in the  
rubric as to the  
real presence;

Of the latter, the most noticeable are, first, the change in the rubric to the Holy Communion of "any real and essential presence there being of Christ's natural flesh and blood," into its present words of "any corporal presence of Christ's natural

and in the office  
of baptism.

flesh and blood," and secondly, the addition to the office of

Infant Baptism of the clause respecting the undoubted salvation of baptized infants dying before the commission of actual sin.

The other alterations have been thus summarized. (s) "The Sentences, the Epistles and Gospels, and other extracts from the Bible (except the Psalter, the Ten Commandments, and other portions of the Communion Service) were taken generally from the version of 1611. The Absolution was ordered to be pronounced by the 'priest' alone, instead of the 'minister.' The Book of Bel and the Dragon was re-inserted in the Calendar of Lessons. The prayers for the king, the royal family, the clergy and people, together with the prayer of St. Chrysostom and the Benediction, were printed in the Order both of Morning and Evening Service, instead of being left, as formerly, at the end of the Litany. The Evening Service, which previously began with the Lord's Prayer, was now opened with the Sentences, the Exhortation, the Confession and Absolution, printed as in

(s) According to Dr. Tenison, the alterations altogether amounted to about 600; Cardwell's Conferences, pp. 385-6.



the Morning Service. In the Litany, the words 'rebellion' and 'schism' were added to the petition respecting 'sedition, privy conspiracy,' &c. In a subsequent petition, the words, 'bishops, priests, and deacons,' were employed instead of bishops, 'pastours, and ministers of the Church.' Among the occasional prayers and thanksgivings were now introduced a second prayer, 'in the time of dearth and famine,' the two prayers for the Ember weeks, the prayers for the parliament and for all conditions of men, a thanksgiving for restoring public peace at home, and the general thanksgiving. New collects were appointed for the Third Sunday in Advent, and for St. Stephen's day. The Genealogy, which previously made part of the Gospel for the Sunday after Christmas, was now omitted. A distinct collect, Epistle, and Gospel, were provided for a sixth Sunday after the Epiphany. The Gospels for the Sunday next before Easter and for Good Friday were shortened, having formerly contained within them respectively the second lesson for the morning. (t) In several places, as in one of the collects for Good Friday, in those for the Fifth and Sixteenth Sundays after Trinity, for St. Simon and St. Jude, and in other places, the word 'church' was used for 'congregation.' A distinct collect was supplied for Easter-even. The first of the anthems used on Easter-day was added. A distinct epistle was provided for the day of the Purification. The last clause respecting saints departed was added to the prayer for the Church militant. The rubric was added as to 'covering what remaineth of the consecrated elements with a fair linen cloth.' The Order in Council respecting kneeling at the Lord's Supper, which had been introduced in 1552, and removed by Queen Elizabeth, was shortened and restored, with this alteration; instead of 'any real and essential presence there being of Christ's natural flesh and blood,' it is now read, 'any corporal presence of Christ's natural flesh and blood.' An office was ap-

(t) Vide Elizabethan Liturgies, Pref. xiii.

pointed for the 'baptism of such as are of riper years;' and some alterations made in the other offices of Baptism. The Preface to Confirmation was curtailed, and the clause respecting the undoubted salvation of baptized infants dying before the commission of actual sin, was placed after the office for Infant Baptism. Some changes were made in the offices for Confirmation and Matrimony; and in the rubric at the end of the latter, the receiving the communion on the day of the marriage was no longer made imperative. In the Visitation of the Sick, the words 'if he humbly and heartily desire it,' were added to the rubric respecting absolution; the Benediction also, and the prayers that follow, appeared now for the first time. In the Order for Burial, the first rubric respecting persons dying unbaptized or excommunicate was added. Forms of prayer were supplied to be used at sea. (*u*)

Act of Uniformity of  
1662.

The services having been thus revised, Charles II.'s Act of Uniformity was passed, of which the second section enacted (*uu*):—"That all and singular ministers in any cathedral, collegiate or parish church or chapel, or other place of public worship within this realm of England, dominion of Wales, and Town of Berwick-upon-Tweed, shall be bound to say and use the morning prayer, evening prayer, celebration and administration of both the sacraments, and all other the public and common prayer in such order and form as is mentioned in the said book annexed and joined to this present Act . . . . . and that the morning and evening prayers therein contained, shall, upon every Lord's day, and upon all other days and occasions, and at the times therein appointed, be openly and solemnly read by all and every minister or curate in every church, chapel, or other place of public worship within this realm of England and places aforesaid."

(*u*) Cardwell's Conferences, 380-384. See also 2 Short, Hist. of the Church, 320.

(*uu*) 13 & 14 Car. II. c. 4, s. 2.

The copies referred to in this section are styled the "Sealed Books." They are as good records and evidence as the original Manuscript Book of Common Prayer itself. They and this original manuscript alone are the Common Prayer as sanctioned by the Statute ; and every deviation from them, whether of wording, spelling, reference, or punctuation, is illegal. Yet it will scarcely be deemed credible that—with the solitary exception of the very learned and elaborate edition of Dr. Stephens (*v*)—there is no copy now in existence of the Common Prayer which makes the slightest approach to accuracy. The following extract from the Introduction by Dr Stephens in reference to this is most conclusive :—"Every person must know, that the 'Order for Morning Prayer' is one of the easiest parts to print in the Book of Common Prayer. This 'Order' occupies only sixteen pages in the Sealed Books, and in the Oxford quarto of 1848 ten pages, there being, however, very little more than nine pages of solid type. Assuming that the Editor, at pp. 387-441, has printed the text of the Sealed Books accurately, the following table will exhibit the amount of the inaccuracies of the Oxford quarto edition of 1848 :—

|                                          |     |
|------------------------------------------|-----|
| Words omitted . . . . .                  | 2   |
| Words misspelled . . . . .               | 51  |
| Words improperly inserted . . . . .      | 5   |
| Large letters changed to small . . . . . | 23  |
| Small letters changed to large . . . . . | 107 |
| Points omitted or altered . . . . .      | 49  |
| Points inserted . . . . .                | 21  |
| ¶ omitted . . . . .                      | 7   |
| Typographical errors . . . . .           | 15  |

---

Total variations from S. B. 'Morning Prayer' . . . . . 280

(*v*) "The Book of Common Prayer : with Notes, Legal and Historical," by Archibald John Stephens, Barrister-at-law. (Ecclesiastical Hist. Soc.)

"In this Oxford Edition there are (exclusive of what are called 'The Psalms of David, by Brady and Tate') 442 pages *after* the Order of Morning Prayer to the page containing the Table of Kindred and Affinity inclusive, upon which page is printed 'The End': consequently if the first ten of these pages contain 280 deviations from the Sealed Books, and they be taken as a fair specimen of the entire, the Oxford quarto edition of 1848 contains above 12,500 deviations from the real matter it affects to reprint. These data can hardly be objected to, because the University is credited with three-quarters of a page at least in every ten pages, and the first forty pages of the book, from their extreme badness, have not been taken into account: but the Editor wishes to make the University every liberal allowance for inaccuracies; for so cumulative is the evidence, that a few hundreds, or thousands even, are of trivial importance." (*w*)

Changes made  
in the present  
reign.

With the exception of state and public services, and the change from time to time in various prayers and thanksgivings of the names of the royal family, (*x*) no alteration has been made in the Order of Common Prayer till the present reign. By the Act of 1871, "to amend the Law relating to the Table of Lessons and Psalter contained in the Prayer Book;" (*y*) the Daily Lessons and Psalms have undergone a complete revision. The new tables are to become obligatory from 1st January, 1879, their use at present being merely optional. By the Statute 35 & 36 Vict. c. 35, (*z*) a shortened Order for Morning Prayer or for Evening Prayer specified in the Act may be used on certain occasions.

(*w*) "The Book of Common Prayer." By Archibald John Stephens, Barrister-at-law. (Ecc. Hist. Soc.) Vol. ii. Introduction, pp. vi.-vii.

(*x*) In virtue of the proviso contained in sect. 25 of 13 & 14 Car. II. c. 4.

(*y*) 34 & 35 Vict. c. 37, given *post*, part iii. chap. ii.

(*z*) Given *post*, part iii. chap. i.



SECTION III.—*The Ordinary Services.*

FIRST.—THE INTRODUCTORY PART OF THE  
PRAYER BOOK.

HAT may be styled the introduction to the Services, varies The Title-page.  
considerably in the different editions of the Book of  
Common Prayer. The title-page assumes the following forms  
in Edward VI.'s Books :—

1549.

THE  
Book of the Common  
Prayer and Admin-  
istration of  
the  
Sacraments, and other  
Rites and Ceremonies of  
the Church : after the  
use of the Church  
of England.

—  
LONDINI IN OFFICINA

Edouardi Whytchurche.

Cum Priuilegio ad imprimendum solum.

ANNO DO. 1549. Mense  
Maij.

1552.

The Book of  
Common Prayer, and Ad-  
ministration of the  
Sacraments  
and other  
Rites  
and Ceremonies in  
the Church of  
England.

¶ *Londini, in Officina Ed-  
uuardi Whytchurche.*

¶ *Cum Priuilegio ad ImPri-  
mendum Solum.*

*Anno 1552.*

In the Sealed Books it is thus :

The Book  
of  
Common Prayer  
And Administration  
Of the  
Sacraments,  
And other  
Rites and Ceremonies  
Of the Church,  
According to the Use  
Of the  
Church of England ;  
Together with the  
Psalter or Psalms  
of  
David,

Pointed as they are to be Sung  
or Said in Churches:  
And the  
Form or Manner  
of  
Making, Ordaining, & Consecrating  
of  
Bishops, Priests,  
and  
Deacons.

—  
London,  
Printed by His Ma<sup>ties</sup> Printers,  
Cum Privilegio.

MDCLXII.

Next come the Contents :—

| 1549.                                                                                                                                                                                                 | 1552.                                                                                            | SEALED BOOKS.                                                            |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| <i>The Contents of this Book.</i>                                                                                                                                                                     | <i>The Contents of this Book.</i>                                                                | <i>The Contents of this Book.</i>                                        |
| 1. A Preface.                                                                                                                                                                                         | 1. A Preface.                                                                                    | 1. An Act for the Uniformity of Common Prayer.                           |
| 2. A Table and Kalendar for Psalms and Lessons, with necessary rules pertaining to the same.                                                                                                          | 2. Of Ceremonies, why some be abolished and some retained.                                       | 2. The Preface.                                                          |
| 3. The Order for Matins and Evensong, throughout the year.                                                                                                                                            | 3. The order how the Psalter is appointed to be read.                                            | 3. Concerning the Service of the Church.                                 |
| 4. The Introits, Collects, Epistles and Gospels, to be used at the celebration of the Lord's Supper, and holy Communion through the year, with proper Psalms and Lessons, for divers feasts and days. | 4. The Table for the order of the Psalms to be said at Morning and Evening Prayer.               | 4. Concerning Ceremonies.                                                |
| 5. The Supper of the Lord and holy Communion, commonly called the Mass.                                                                                                                               | 5. The order how the rest of holy Scripture is appointed to be read.                             | 5. The Order how the Psalter is appointed to be read.                    |
| 6. The Litany and Suffrages.                                                                                                                                                                          | 6. Proper Psalms and Lessons at Morning and Evening Prayer, for certain feasts and days.         | 6. The Order how the rest of the holy Scripture is appointed to be read. |
|                                                                                                                                                                                                       | 7. An Almanack.                                                                                  | 7. A Table of proper Lessons and Psalms.                                 |
|                                                                                                                                                                                                       | 8. The Table and Kalendar for Psalms and Lessons, with necessary rules appertaining to the same. | 8. Tables and Rules for the Feasts and Fasts through the whole year.     |
|                                                                                                                                                                                                       | 9. The order for                                                                                 | 9. The Kalendar, with the Table of Lessons.                              |
|                                                                                                                                                                                                       |                                                                                                  | 10. The Order for Morning Prayer.                                        |

1549.

7. Of Baptism, both public and private.
8. Of Confirmation, where also is a Catechism for Children.
9. Of Matrimony.
10. Of Visitation of the Sick, and Communion of the same.
11. Of Burial.
12. The purification of Women.
13. A declaration of Scripture, with certain prayers to be used the first day of Lent, commonly called Ash Wednesday.
14. Of Ceremonies omitted or retained.
15. Certain notes for the more plain explication and decent ministration of things contained in this book.

1552.

- Morning Prayer and Evening Prayer, throughout the year.
10. The Litany.
11. The Collects, Epistles, and Gospels, to be used at the ministration of the holy Communion, throughout the year.
12. The order of the ministration of the holy Communion.
13. Baptism, both public and private.
14. Confirmation, where also is a Catechism for children.
15. Matrimony.
16. Visitation of the Sick.
17. The Communion of the Sick.
18. Burial.
19. The Thanksgiving of Women after Childbirth.
20. A Commination against sinners, with certain Prayers to be used divers times in the year.
21. The form and manner of making and consecrating of Bishops, Priests, and Deacons.

SEALED BOOKS.

11. The Order for Evening Prayer.
12. The Creed of S. Athanasius.
13. The Litany.
14. Prayers and Thanksgivings upon several occasions.
15. The Collects, Epistles and Gospels, to be used at the Ministration of the holy Communion throughout the year.
16. The Order of the Ministration of the holy Communion.
17. The Order of Baptism, both publick and private.
18. The Order of Baptism for those of riper years.
19. The Catechism, with the Order for Confirmation of children.
20. Matrimony.
21. Visitation of the Sick, and Communion of the Sick.
22. Burial.
23. Thanksgiving for Women after child-bearing.
24. A Commination or Denouncing of God's anger and judgments against sinners.
25. The Psalter.
26. The Order of Prayers to be used at Sea.
27. A Form and Manner of Ordaining Bishops, Priests, and Deacons.

In the Sealed Books and in all the authorized editions of the present Prayer Books are, or ought to be, inserted immediately after the Contents, the two Acts of Uniformity of Elizabeth and Charles II. (a)

The Preface,  
as contained in  
the First and  
Second Prayer  
Books.

Then comes the Preface :—

1549.

1552.

There was never anything by the wit of man so well devised, or so (b) surely established, which (in continuance of time) hath not been corrupted: as (among other things) it may plainly appear by the Common Prayers in the Church, commonly called Divine Service: the first original and ground whereof, if a man would search out by the ancient Fathers, he shall find that the same was not ordained, but of a good purpose, and for a great advancement of godliness: for they so ordered the matter, that all the whole Bible (or the greatest part thereof) should be read over once in the year, intending thereby, that the Clergy, and specially such as were ministers of the congregation, should (by often reading and meditation of God's word) be stirred up to godliness themselves, and be more able also to exhort other by wholesome doctrine, and to confute them that were adversaries to the truth. And further, that the people (by daily hearing of holy scripture read in the church) should continually profit more and more in the knowledge of God, and be the more inflamed with the love of his true religion. But these many years past, this godly and decent order of the ancient Fathers hath been so altered, broken, and neglected, by planting in uncertain stories, legends, responds, verses, vain repetitions, commemorations, and synodals, that commonly when any book of the Bible was begun, before three or four chapters were read out, all the rest were unread. And in this sort, the book of Isaiah was begun in Advent, and the book of Genesis in Septuagesima: but they were only begun, and never read through. After a like sort were other books of holy scripture used. And moreover, whereas S. Paul would have such language spoken to the people in the church, as they might understand and have profit by hearing the same: the service in this Church of England (these many years) hath been read in Latin to the people, which they understood not, so that they have heard with their ears only: and their hearts, spirit, and mind, have not been edified thereby. And furthermore, notwithstanding that the ancient Fathers (c) had divided the Psalms into seven portions; whereof every one was called a nocturn; now of late time a few of them have been daily said (and oft repeated) and the rest utterly omitted. Moreover, the number and hardness of the rules called the Pie, and the manifold changings of the service, was the cause,

(a) See *post*, part iii. chap. i. ss. 2 & 3.

(b) sure 1552.

(c) have 1552.



1549.

that to turn the book only was so hard and intricate a matter, that many times there was more business to find out what should be read, than to read it when it was found out.

1552.

These inconveniences therefore considered, here is set forth such an order, whereby the same shall be redressed. And for a readiness in this matter, here is drawn out a Calendar for that purpose, which is plain and easy to be (*d*)understanded, wherein (so much as may be) the reading of holy scripture is so set forth, that all things shall be done in order, without breaking one piece thereof from another. For this cause be cut off Anthems, Responds, Invitatories, and such like things, as did break the continual course of the reading of the scripture. Yet because there is no remedy, but that of necessity there must be some rules; therefore certain rules are here set forth, which as they be few in number, so they be plain and easy to be (*d*)understanded. So that here you have an Order for Prayer (as touching the reading of holy scripture) much agreeable to the mind and purpose of the old Fathers, and a great deal more profitable and commodious than that which of late was used. It is more profitable, because here are left out many things, whereof some be untrue, some uncertain, some vain and superstitious: and is ordained nothing to be read but the very pure word of God, the holy scriptures, or that which is evidently grounded upon the same: and that in such a language and order, as is most easy and plain for the understanding, both of the readers and hearers. It is also more commodious, both for the shortness thereof, and for the plainness of the Order, and for that the rules be few and easy. Furthermore, by this Order, the Curates shall need none other books for their public service, but this book and the Bible: by the means whereof the people shall not be at so great charge for books as in time past they have been.

And where heretofore there hath been great diversity in saying and singing in churches within this realm: some following Salisbury Use, some Hereford Use, some the Use of Bangor, some of York, and some of Lincoln: now from henceforth, all the whole realm shall have but one Use. And if any would judge this way more painful, because that all things must be read upon the book, whereas before, by the reason of so often repetition, they could say many things by heart: if those men will weigh their labour with the profit (*e*)in knowledge which daily they shall obtain by reading upon the book, they will not refuse the pain, in consideration of the great profit that shall ensue thereof.

And (*f*)forsomuch as nothing can almost be so plainly set forth, but doubts may rise in the use and practising of the same: to appease all such diversity, (if any arise,) and for the resolution of all

(*d*) understanden 1552.

(*e*) and 1552.

(*f*) forasmuch 1552.

1549.

doubts, concerning the manner how to understand, do, and execute the things contained in this book, the parties that so doubt, or diversly take any thing, shall always resort to the bishop of the diocese, who by his discretion shall take order for the quieting and appeasing of the same: so that the same order be not contrary to any thing contained in this book.

1552.

to any thing contained in this book. And if the bishop of the diocese be in any doubt, then may he send for the resolution thereof unto the archbishop.

Though it be appointed in the afore written Preface, that all things shall be read and sung in the church, in the English tongue, (ff) to the end that the congregation may be thereby edified: yet it is not meant, but when men say (g) Matins and Evensong privately, they may say the same in any language that they themselves do understand.

Neither that any man shall be bound to the saying of them, but such as from time to time, in cathedral and collegiate churches, parish churches, and chapels to the same annexed, shall serve the congregation.

And all priests and deacons shall be bound to say daily the Morning and Evening Prayer, either privately or openly, except they be letted by preaching, studying of divinity, or by some other urgent cause.

And the curate that ministereth in every parish church or chapel, being at home and not being otherwise reasonably letted, shall say the same in the parish church or chapel where he ministereth, and shall toll a bell thereto, a convenient time before he begin, that such as be disposed may come to hear God's word, and to pray with him.

## SEALED BOOKS.

The Preface as contained in the present Prayer Book.

It hath been the Wisdom of the Church of *England*, ever since the first compiling of her Publick Liturgy, to keep the Mean between the two Extreame, of too much Stiffness in refusing, and of too much Easiness in admitting any variation from it. For, as on the one side common Experience sheweth, that where a change hath been made of things advisedly established (no evident necessity so requiring) sundry inconveniences have thereupon ensued; and those

(ff) See *ante*, p. 34.

(g) Morning and Evening Prayer 1552.

many times more, and greater than the evils, that were intended to be remedied by such change: So on the other side, the particular Forms of Divine Worship, and the Rites, and Ceremonies appointed to be used therein, being things in their own nature Indifferent, and alterable, and so acknowledged; it is but reasonable, that upon weighty and important considerations, according to the various exigency of times and occasions, such changes and alterations should be made therein, as to those that are in place of Authority should from time to time seem either necessary or expedient. Accordingly we find, that in the Reigns of several Princes of blessed memory since the Reformation, the Church upon just and weighty considerations her thereunto moving, hath yielded to make such alterations in some particulars, as in their respective times were thought convenient: Yet so, as that the main Body and Essentials of it (as well in the chiefest materials, as in the frame and order thereof) have still continued the same unto this day, and do yet stand firm and unshaken, notwithstanding all the vain attempts and impetuous assaults made against it by such men as are given to change, and have always discovered a greater regard to their own private fancies and interests, than to that duty they owe to the publick.

By what undue means, and for what mischievous purposes the use of the Liturgy (though enjoined by the Laws of the Land, and those Laws never yet repealed) came, during the late unhappy confusions, to be discontinued, is too well known to the World, and we are not willing here to remember. But when, upon His Majesties happy Restauration it seemed probable, that, amongst other things, the use of the Liturgy also would return of course (the same having never been legally abolished) unless some timely means were used to prevent it; those men who under the late usurped powers had made it a great part of their business to render the people disaffected thereunto, saw themselves in point of reputation and interest concerned (unless they would freely acknowledge themselves to have erred, which such men are very hardly brought to do) with their utmost endeavours to hinder the restitution thereof. In order whereunto divers Pamphlets were published against the Book of *Common Prayer*, the old Objections mustered up, with the addition of some new ones more than formerly had been made, to make the number swell. In fine great importunities were used to His Sacred Majesty, that the said Book might be Revised, and such Alterations therein, and Additions thereunto made, as should be thought requisite for the ease of tender Consciences: Whereunto His Majesty out of His pious Inclination to give satisfaction (so far as could be reasonably expected) to all His Subjects of what perswasion soever, did graciously condescend.

In which Review we have endeavoured to observe the like Moderation, as we find to have been used in the like case in former times. And therefore of the sundry Alterations proposed unto us, we have rejected all such as were either of dangerous consequence



(as secretly striking at some established Doctrine, or laudable Practice of the Church of *England*, or indeed of the whole Catholick Church of Christ) or else of no consequence at all, but utterly frivolous and vain. But such Alterations as were tendred to us (by what persons, under what pretenses, or to what purpose soever so tendred) as seemed to us in any degree requisite or expedient, we have willingly, and of our own accord assented unto: Not enforced so to do by any strength of Argument, convincing us of the necessity of making the said Alterations: For we are fully perswaded in our judgments (and we here profess it to the World) that the Book, as it stood before established by Law, doth not contain in it any thing contrary to the Word of God, or to sound Doctrine, or which a godly man may not with a good Conscience use and submit unto, or which is not fairly defensible against any that shall oppose the same; if it shall be allowed such just and favourable construction as in Common Equity ought to be allowed to all Humane Writings, especially such as are set forth by Authority, and even to the very best Translations of the holy Scripture it self.

Our general aim therefore in this undertaking was, not to gratifie this or that party in any their unreasonable demands; but to do that, which to our best understandings we conceived might most tend to the preservation of Peace and Unity in the Church; the procuring of Reverence, and exciting of Piety, and Devotion in the Publick Worship of God; and the cutting off occasion from them that seek occasion of cavil, or quarrel against the Liturgy of the Church. And as to the several variations from the former Book, whether by Alteration, Addition, or otherwise, it shall suffice to give this general account, That most of the Alterations were made, either first, for the better direction of them that are to officiate in any part of Divine Service; which is chiefly done in the Kalendars and Rubricks: Or secondly, for the more proper expressing of some words or phrases of ancient usage in terms more sutable to the language of the present times, and the clearer explanation of some other words and phrases, that were either of doubtful signification, or otherwise liable to misconstruction: Or thirdly, for a more perfect rendring of such portions of holy Scripture, as are inserted into the Liturgy; which, in the Epistles and Gospels especially, and in sundry other places are now ordered to be read according to the last Translation: And that it was thought convenient, that some Prayers and Thanksgivings, fitted to special occasions, should be added in their due places; particularly for those at Sea, together with an Office for the Baptism of such as are of riper years; which, although not so necessary when the former Book was compiled, yet by the growth of Anabaptism, through the licentiousness of the late times crept in amongst us, is now become necessary, and may be always useful for the Baptizing of Natives in our Plantations, and others converted to the Faith. If any man, who shall desire a more particular account of the several Alterations in any part of the Liturgy, shall



take the pains to compare the present Book with the former ; we doubt not but the reason of the change may easily appear.

And having thus endeavoured to discharge our duties in this weighty affair, as in the sight of God, and to approve our sincerity therein (so far as lay in us) to the consciences of all men ; although we know it impossible (in such variety of apprehensions, humours, and interests, as are in the world) to please all ; nor can expect that men of factious, peevish, and perverse spirits should be satisfied with any thing that can be done in this kind by any other than themselves : Yet we have good hope, that what is here presented, and hath been by the Convocations of both Provinces with great diligence examined and approved, will be also well accepted and approved by all sober, peaceable, and truly conscientious sons of the Church of *England*.

Following the Preface, there is in the Sealed Books, but not in the earlier Prayer Books, the well-known instruction—

*So Concerning the Service of the Church.*

There was never any thing by the wit of man so well devised, or so sure established, which, in continuance of time, hath not been corrupted : As, among other things, it may plainly appear by the Common Prayers in the Church, commonly called *Divine Service*, The first original and ground whereof if a man would search out by the ancient Fathers, he shall find, that the same was not ordained, but of a good purpose, and for a great advancement of godliness. For they so ordered the matter, that all the whole Bible, (or the greatest part thereof) should be read over once every year ; intending thereby, that the Clergy, and especially such as were Ministers in the Congregation, should (by often reading, and meditation in Gods word) be stirred up to godliness themselves, and be more able to exhort others by wholesom doctrine, and to confute them that were Adversaries to the Truth ; and further, that the people (by daily hearing of holy Scripture read in the Church) might continually profit more and more in the knowledge of God, and be the more inflamed with the love of his true Religion.

Concerning the  
Service of the  
Church.

But these many years passed, this godly and decent Order of the ancient Fathers hath been so altered, broken, and neglected, by planting in uncertain Stories, and Legends, with multitude of Responds, Verses, vain Repetitions, Commemorations, and Synodals ; that commonly, when any Book of the Bible was begun, after three or four Chapters were read out, all the rest were unread. And in this sort the Book of *Isaiab* was begun in *Advent*, and the Book of *Genesis* in *Septuagesima* ; but they were only begun, and never read thorough : After like sort were other Books of holy Scripture used. And moreover, whereas *St. Paul* would have such language spoken to the people in the Church, as they might understand and

have profit by hearing the same; The Service in this Church of *England* these many years, hath been read in Latin to the people, which they understand not; so that they have heard with their ears only, and their heart, spirit, and mind have not been edified thereby. And furthermore, notwithstanding that the ancient Fathers have divided the *Psalms* into seven Portions, whereof every one was called a *Nocturn*: Now of late time, a few of them have been daily said, and the rest utterly omitted. Moreover, the number and hardness of the Rules called the *Pie*, and the manifold changings of the Service was the cause, that to turn the Book only was so hard and intricate a matter, that many times there was more business to find out what should be read, than to read it when it was found out.

These inconveniences therefore considered, here is set forth such an Order, whereby the same shall be redressed. And for a readiness in this matter, here is drawn out a Kalendar for that purpose, which is plain and easie to be understood; wherein (so much as may be) the reading of holy Scripture is so set forth, that all things shall be done in order, without breaking one piece from another. For this cause be cut off Anthems, Responds, Invitatories, and such like things as did break the continual course of the reading of the Scripture.

Yet, because there is no remedy, but that of necessity there must be some Rules; therefore certain Rules are here set forth; which, as they are few in number, so they are plain and easie to be understood. So that here you have an Order for Prayer, and for the reading of the holy Scripture, much agreeable to the mind and purpose of the old Fathers, and a great deal more profitable and commodious, than that which of late was used. It is more profitable, because here are left out many things, whereof some are untrue, some uncertain, some vain and superstitious; and nothing is ordained to be read, but the very pure Word of God, the holy Scriptures, or that which is agreeable to the same; and that in such a language and order, as is most easie and plain for the understanding both of the readers and hearers. It is also more commodious, both for the shortness thereof, and for the plainness of the Order, and for that the Rules be few and easie.

And whereas heretofore there hath been great diversity in saying and singing in Churches within this Realm; some following *Salisbury* Use, some *Hereford* Use, and some the Use of *Bangor*, some of *York*, some of *Lincoln*; now from henceforth all the whole Realm shall have but one Use.

And for as much, as nothing can be so plainly set forth, but doubts may arise in the use and practice of the same; to appease all such diversity (if any arise) and for the resolution of all doubts, concerning the manner how to understand, do, and execute the things contained in this Book; the parties that so doubt, or diversly take any thing, shall always resort to the Bishop of the Diocess, who by his discretion shall take order for the quieting and appeasing of the

same; so that the same order be not contrary to any thing contained in this Book. And if the Bishop of the Diocess be in doubt, then he may send for the resolution thereof to the Archbishop.

Immediately after this notice, but printed in distinct type, and no doubt not intended to be parcel of it, there are the following instructions as to the language in which prayers are to be said, the time of saying, &c. (11):—

Though it be appointed That all things shall be read and sung in the Church in the English tongue, to the end, that the Congregation may be thereby edified; yet it is not meant, but that when men say Morning and Evening Prayer privately, they may say the same in any language that they themselves do understand.

The Prayers to be said in English;

And all Priests and Deacons are to say daily the Morning and Evening Prayer, either privately or openly, not being let by sickness, or some other urgent cause.

and daily.

And the Curate that ministreth in every Parish-Church or Chappel, being at home, and not being otherwise reasonably hindered, shall say the same in the Parish-Church or Chappel where he ministreth, and shall cause a Bell to be tolled thereunto a convenient time before he begin, that the people may come to hear Gods Word, and to pray with him.

A Bell to be rung.

Next to the preface in the Prayer Book of 1552, and next to the instructions above set forth in the present Book, comes the exposition “of Ceremonies.” In the First Prayer Book it is placed very near the end, and is styled “of Ceremonies omitted or retained.” The wording, with but minute differences, is the same in all the editions.

“Of ceremonies.”

*Of Ceremonies, why some be abolished and some retained. (b)*

Of such Ceremonies as be used in the Church, and have had their beginning by the institution of man, some at the first were of godly intent and purpose devised, and yet at length turned to vanity and superstition: Some entered into the Church by indiscreet devotion, and such a zeal as was without knowledge; and for because they were winked at in the beginning, they grew daily to more and more abuses, which not only for their unprofitableness, but also because they have much blinded the people, and obscured the glory of God, are worthy to be cut away, and clean rejected: Other there be,

(11) It will be observed that these instructions are almost identical in wording with those given *ante*, p. 76, at the conclusion of the Preface in the first two Prayer Books.

(h) As here printed it is taken from the Sealed Books.



which although they have been devised by man, yet it is thought good to reserve them still, as well for a decent order in the Church (for the which they were first devised) as because they pertain to edification, whereunto all things done in the Church (as the Apostle teacheth) ought to be referred.

And although the keeping or omitting of a Ceremony, in it self considered, is but a small thing; yet the wilful and contemptuous transgression and breaking of a common order and discipline, is no small offence before God. *Let all things be done among you, saith St. Paul, in a seemly and due order;* The appointment of the which order pertaineth not to private men; therefore no man ought to take in hand, nor presume to appoint or alter any publick or common Order in Christs Church, except he be lawfully called and authorized thereunto.

And whereas in this our time, the mindes of men are so divers, that some think it a great matter of conscience to depart from a piece of the least of their Ceremonies, they be so addicted to their old customs; and again on the other side, some be so new-fangled, that they would innovate all things, and so despise the old, that nothing can like them, but that is new: It was thought expedient not so much to have respect how to please and satisfie either of these parties, as how to please God, and profit them both. And yet lest any man should be offended, whom good reason might satisfie, here be certain causes rendred, why some of the accustomed Ceremonies be put away, and some retained and kept still.

Some are put away, because the great excess and multitude of them hath so increased in these latter days, that the burthen of them was intolerable; whereof St. *Augustine* in his time complained, that they were grown to such a number, that the estate of Christian people was in worse case concerning that matter, than were the Jews. And he counselled, that such yoke and burthen should be taken away, as time would serve quietly to do it. But what would St. *Augustine* have said, if he had seen the Ceremonies of late days used amongst us; whereunto the multitude used in his time was not to be compared? This our excessive multitude of Ceremonies was so great, and many of them so dark that they did more confound and darken, than declare and set forth Christs benefits unto us. And besides this, Christs Gospel is not a Ceremonial Law (as much of *Moses* Law was) but it is a Religion to serve God, not in bondage of the figure or shadow, but in the freedom of the spirit; being content only with those Ceremonies which do serve to a decent Order, and godly Discipline, and such as be apt to stir up the dull minde of man to the remembrance of his duty to God, by some notable and special signification, whereby he might be edified. Furthermore, the most weighty cause of the abolishment of certain Ceremonies was, That they were so far abused; partly by the superstitious blindness of the rude and unlearned, and partly by the



unsatiable avarice of such as sought more their own lucre, than the glory of God, that the abuses could not well be taken away, the thing remaining still.

But now as concerning those persons, which peradventure will be offended, for that some of the old Ceremonies are retained still: If they consider, that without some Ceremonies it is not possible to keep any Order, or quiet Discipline in the Church, they shall easily perceive just cause to reform their judgments. And if they think much, that any of the old do remain, and would rather have all devised anew: Then such men granting some Ceremonies convenient to be had, surely where the old may be well used, there they cannot reasonably reprove the old only for their age, without bewraying of their own folly. For in such a case they ought rather to have reverence unto them for their antiquity, if they will declare themselves to be more studious of unity and concord, than of innovations and new-fangledness, which (as much as may be with true setting forth of Christs Religion) is always to be eschewed. Furthermore, such shall have no just cause with the Ceremonies reserved to be offended. For as those be taken away which were most abused, and did burden mens consciences without any cause; so the other that remain, are retained for a Discipline and Order, which (upon just causes) may be altered and changed, and therefore are not to be esteemed equal with Gods Law. And moreover, they be neither dark nor dumb Ceremonies, but are so set forth, that every man may understand what they do mean, and to what use they do serve. So that it is not like that they in time to come should be abused as other have been. And in these our doings we condemn no other Nations, nor prescribe any thing but to our own people onely: For we think it convenient, that every Countrey should use such Ceremonies as they shall think best to the setting forth of Gods honour and glory, and to the reducing of the people to a most perfect and godly living, without error or superstition; and that they should put away other things, which from time to time they perceive to be most abused, as in mens ordinances it often chanceth diversly in divers Countreys.

There follow (*i*) the Kalendar and the Tables for Psalms and Lessons, (*k*) together with the rules appertaining to the same. As these matters are of comparatively slight importance in connection with the present subject, they are omitted. This ends the introductory portion of the Prayer Book. Kalendar.

(*i*) See Table of Contents, *ante*, pp. 72-3.

(*k*) As to the present Lessons, see 34 & 35 Vict. c. 37, given *post*, part iii. chap. i.

Notes as to the services contained in the First Book.

It will, however, be convenient to introduce here the explanatory notes which are placed at the end of the First Book of Edward VI. These are as follows :—

*Certain Notes for the more plain Explication and decent Ministration of Things contained in this Book. (I)*

In the saying or singing of Matins and Evensong, baptizing and burying, the Minister, in parish churches and chapels annexed to the same, shall use a surplice; and in all cathedral churches and colleges, the Archdeacons, Deans, Provosts, Masters, Prebendaries, and Fellows, being Graduates, may use in the quire, beside their surplices, such hoods as pertaineth to their several degrees, which they have taken in any university within this realm: but in all other places, every Minister shall be at liberty to use any surplice or no. It is also seemly, that Graduates, when they do preach, shall use such hoods as pertaineth to their several degrees.

¶ And whensoever the Bishop shall celebrate the holy communion in the church, or execute any other public ministration, he shall have upon him, beside his rochette, a surplice or albe, and a cope or vestment; and also his pastoral staff in his hand, or else borne or holden by his chaplain.

¶ As touching kneeling, crossing, holding up of hands, knocking upon the breast, and other gestures, they may be used or left, as every man's devotion serveth, without blame.

¶ Also upon Christmas Day, Easter Day, the Ascension Day, Whit Sunday, and the feast of the Trinity, may be used any part of holy scripture hereafter to be certainly limited and appointed, in the stead of the Litany.

¶ If there be a sermon, or for other great cause, the Curate, by his discretion, may leave out the Litany, Gloria in Excelsis, the Creed, the Homily, and the Exhortation to the Communion.

## SECOND.—MORNING PRAYER.

Morning Prayer.

The main object of this chapter being to set forth the general order of the Services and the mode of conducting the same, as directed by law, and to compare them with the earlier Services, this will be most conveniently done by printing in parallel columns the rubrics in full, and such parts only of the prayers, responses, &c., either as do not occur in the present Prayer Book or as may be requisite as a heading or note to indicate the prayer, response, &c. Matters of ritual, ceremonial, and ornamentation depend upon the directions contained in the rubrics,

(I) These Notes are not printed in the edition of 1552.

and these very generally have to be construed by reference to earlier rubrics. As to the prayers, &c., little difficulty arises. They and they alone have to be used, *ipsissimis verbis*, without addition or modification, if and when enjoined by the rubrics.

1549.

*An Order for Matins daily through the year.*

1552.

*The Order where Morning and Evening Prayer shall be used and said.*

SEALED BOOKS.

*The Order for Morning and Evening Prayer daily to be said and used throughout the year.*

¶ The Morning and Evening Prayer shall be used in such place of the church, chapel, or chancel, and the Minister shall so turn him, as the people may best hear. And if there be any controversy therein, the matter shall be referred to the Ordinary, and he or his Deputy shall appoint the place, and the chancels shall remain as they have done in times past.

The Morning and Evening Prayer shall be used in the accustomed place of the Church, Chappel, or Chancel; Except it shall be otherwise determined by the Ordinary of the place. And the Chancels shall remain as they have done in times past.

And here is to be noted, that the Minister at the time of the Communion, and at all other times in his ministration, shall use neither alb, vestment, nor cope: but being archbishop or bishop, he shall have and wear a rochet: and being a priest or deacon, he shall have and wear a surplice only.

And here is to be noted, that such Ornaments of the Church and of the Ministers thereof at all times of their Ministration, shall be retained and be in use, as were in this Church of *England*, by the Authority of Parliament, in the second year of the Reign of King *Edward* the Sixth.

The title in the present Prayer Book has the term "daily." Term "Daily."  
It has been shown (*m*) that this expression is to be taken literally,

(*m*) *Ante*, pp. 26-9.

and that upon a proper comparison of authorities the rubrics are to be taken as ordering the daily holding by ministry of the morning and evening services in the accustomed place of worship.

Both the above rubrics are wanting in the First Prayer Book.

Position of  
minister.

As to the first of them—the most important difference between its original and present form consists in the direction, not now found, as to the position in the sacred edifice of the minister when conducting the services.

Vestments and  
ornamenta-  
tion.

As to the second—the Prayer Book of 1552 contained specific directions in respect of the vestments to be worn by the officiating clergyman. In the present Book there is substituted, in lieu of such specific directions, a reference to the Church Articles, *tempore* 1548-9. This reference is plainly worded, and upon the face of it seems as specific and explicit as the rubric which it has replaced. Legal and ecclesiastical minds however, working together, have strangely interpreted this very plain order. The whole rubric will be discussed at length in chapter viii., in so far as it relates to the ornaments of the church, and in chapter vii., in so far as it relates to those of the minister—that is, to vestments. Here it will suffice to say that by the “Authority of Parliament” is meant the Act of Parliament 2 & 3 Ed. VI. c. 1; (*n*) that the expression “ornaments of the church” means the articles, and only those, the use of which in the services of the church is prescribed by the First Prayer Book; (*o*) and that the ornaments of the minister mean—not those *i.e.*, the white alb, the tunicle, the cope, the chasuble, and the surplice, which were so prescribed and which were actually so used at that time—but the surplice, with the university hood, which is prescribed by the 24th and 58th canons, (*p*) taken in connection with Charles II.’s Act of Uniformity. (*q*)

(*n*) *Westerton v. Liddell*, Moore, Special Report, 156, 160, 187; *Martin v. Mackonochie*, L. R. 2 P. C. 365.

(*o*) *Ibid.*

(*p*) See *post*, part iii. chap. v.

(*q*) *Hebbert v. Purchas*, L. R. 3 P. C. 605.



1549.

*An Order for Matins daily through the year.*

1552.

¶ *An Order for Morning Prayer daily throughout the Year.*

At the beginning both of Morning Prayer and likewise of Evening Prayer, the Minister shall read with a loud voice some one of these Sentences of the Scriptures that follow. And then he shall say that which is written after the said Sentences.

SEALED BOOKS.

Sealed Books.

*The Order for Morning Prayer Daily throughout the Year.*

¶ At the beginning of Morning Prayer the Minister shall read with a loud voice some one, or more of these Sentences of the Scriptures, that follow. And then he shall say that which is written after the said Sentences.

The sentences which follow are the same in 1552 and the present Book, but differing considerably in the wording, owing to the difference in translation. The Sentences.

The rubric of 1552 directs "some one" to be read, the present Book "some one or more." In both cases a discretion is left to the minister, which is remarkable on account of its infrequency. (*r*)

Then follows in these two Books (not in 1549) the Exhortation of the minister, and after that the rubric :— Exhortation.

1549.

1552.

SEALED BOOKS.

¶ A general Confession, to be said of the whole Congregation after the Minister, kneeling.

¶ A general Confession to be said of the whole Congregation after the Minister, all kneeling.

The Confession is succeeded by the Absolution (neither occurring in the First Book), the rubrics before and after the latter respectively being— Confession and Absolution.

1549.

1552.

SEALED BOOKS.

The Absolution, to be pronounced by the Minister alone.

¶ The Absolution or Remission of sins to be pronounced by

(*r*) See *ante*, pp. 36-8.

1549.

1552.

SEALED BOOKS.

the Priest alone, standing; the people still kneeling.

¶ The people shall answer, *Amen*.

¶ The people shall answer here, and at the end of all other prayers, *Amen*.

By whom the Absolution is to be pronounced.

The First Book allows the Absolution to be pronounced by the “minister,” which would include a deacon; the present one restricts the person. He must be a priest, which in its technical and strict sense, signifies a presbyter. It is however doubtful whether the word “priest” is so consistently used in the Common Prayer. For instance, in the Versicles succeeding the Lord’s Prayer it manifestly means the officiating clergyman, whatever his degree. But there can be no question that, according to the usage and custom of the Church of England, a deacon may not pronounce the Absolution.

Commencement of the Service according to the First Book.

It is not till now that, according to the First Book, the service really begins, with this rubric:—

1549.

1552.

SEALED BOOKS.

The Priest being in the quire, shall begin with a loud voice the Lord’s Prayer, called the *Paternoster*.

¶ Then shall the Minister begin the Lord’s Prayer with a loud voice.

¶ Then the Minister shall kneel, and say the Lord’s Prayer with an audible voice; the People also kneeling, and repeating it with him, both here, and wheresoever else it is used in Divine Service.

The Lord’s Prayer follows, then the Versicles, then the “Gloria Patri,” which in the present Book alone is preceded by the rubric as to “standing up,” and is succeeded in the 1549 and the present Book by the verse “Praise ye the Lord,” and in the present Book only by the answer, “The Lord’s name be praised,”

there being in lieu thereof in 1549 the words, "And from Easter to Trinity Sunday. Hallelujah."

The "Venite" is preceded by this rubric:—

The "Venite."

1549.

Then shall be said or sung, without any Invitatory, this Psalm, *Venite, exultemus*, &c. in English, as followeth.

1552.

¶ Then shall be said or sung this Psalm following.

SEALED BOOKS.

¶ Then shall be said or sung this Psalm following: Except on Easter day, upon which another Anthem is appointed: and on the Nineteenth day of every month it is not to be read here, but in the ordinary course of the Psalms.

The rubrics immediately following the "Venite" vary considerably:—

1549.

¶ Then shall follow certain Psalms in order as they(s) been appointed in a table made for that purpose, except there be proper Psalms appointed for that day. And at the end of every Psalm throughout the year, and likewise at the end of *Benedictus*, *Benedicite*, *Magnificat*, and *Nunc Dimittis*, shall be repeated,

*Glory be to the Father, and to the Son*, &c.

¶ Then shall be read two lessons distinctly with a loud voice, that the people may hear. The first of the Old Testament, the second of the New; like as they be appointed by the Calendar, except there be proper Lessons assigned for that day: the Minister that readeth the Lesson standing and turning him so as he may best be heard of all such as be present. And before every Lesson, the Minister shall say thus: *The first, second, third or fourth chapter of Genesis or Exodus, Matthew, Mark*, or other like, as is appointed in the Calendar. And in the end of every chapter, he shall say,

¶ *Here endeth such a chapter of such a book.*

1552.

SEALED BOOKS.

¶ Then shall follow the Psalms in order as they be appointed. And at the end of every Psalm throughout the year, and likewise in the end of *Benedicite*, *Benedictus*, *Magnificat*, and *Nunc dimittis*, shall be repeated, *Glory be*, &c.

¶ Then shall be read distinctly with an audible voice the First Lesson, taken out of the Old Testament, as is appointed in the Calendar, (except there be proper Lessons assigned for that day:) He, that readeth, so standing, and turning himself, as he may best be

(s) be 1552.

1549.

And (to the end the people may the better hear) in such places where they do sing, there shall the Lessons be sung in a plain tune, after the manner of distinct reading: and likewise the Epistle and Gospel.

¶ After the first Lesson shall follow throughout the year, except in Lent, all the which time, in the place of *Te Deum*, shall be used *Benedicite omnia Opera Domini Domino*, in English as followeth.

1552.

*Te Deum Laudamus*, in English, daily through the whole year.

SEALED BOOKS.

heard of all such as are present. And after that, shall be said, or sung in English the Hymn, called *Te Deum Laudamus*, daily throughout the year.

¶ Note that before every Lesson the Minister shall say, *Here beginneth such a Chapter, or Verse of such a Chapter of such a Book*: and after every Lesson, *Here endeth the First, or the Second Lesson*.

“Te Deum”  
and “Benedictus.”

The “Te Deum” and the “Benedictus” follow successively; then the Second Lesson, and this rubric:—

1549.

And after the Second Lesson throughout the whole year, shall be used *Benedictus Dominus Deus Israel*, &c. in English, as followeth.

1552.

¶ And after the Second Lesson shall be used and said, *Benedictus*, in English, as followeth.

SEALED BOOKS.

¶ Then shall be read in like manner the Second Lesson, taken out of the New Testament. And after that, the Hymn following except when that shall happen to be read in the Chapter for the day, or for the Gospel on St. John Baptists day.

“Jubilate” and  
Creed.

In the 1552 and the present Book the “Jubilate” is inserted as an alternative for the “Benedictus,” and in these, but not in the First Book, the Creed follows, preceded by the rubric:—

1549.

¶ Then shall be said the Creed, by the Minister and the people, standing.

1552.

SEALED BOOKS.

¶ Then shall be sung, or said the Apostles Creed by the Minister, and the people standing. Ex-



1549.

1552.

SEALED BOOKS.

cept only such daies as the Creed of St. *Athanasius* is appointed to be read.

There has been a slight change in the next portion of the Service ; it runs as follows :—

1549.

Then shall be said daily through the year, the Prayers following, as well at Evensong as at Matins, all devoutly kneeling.

Lord, have mercy upon us.

*Christ, have mercy upon us.*

Lord, have mercy upon us.

Then the Minister shall say the Creed and the Lord's Prayer in English, with a loud voice, &c.

*Ans.* But deliver us from evil. Amen.

1552.

¶ And after that, these prayers following, as well at Evening Prayer as at Morning Prayer, all devoutly kneeling; the Minister first pronouncing with a loud voice,

The Lord be with you.

*Ans.* And with thy spirit.

*The Minister.* Let us pray.

Lord, have mercy upon us.

*Christ, have mercy upon us.*

Lord, have mercy upon us.

¶ Then the Minister, Clerks, and people, shall say the Lord's Prayer in English with a loud voice.

¶ Our Father, which art, &c.

¶ Then the Minister standing up shall say.

SEALED BOOKS.

¶ And after that, these Prayers following, all devoutly kneeling, the Minister first pronouncing with a loud voice,

The Lord be with you.

*Ans.* And with thy spirit.

¶ *Minister.* Let us pray.

Lord have mercy upon us.

*Christ have mercy upon us.*

Lord have mercy upon us.

¶ Then the Minister, Clerks, and people shall say the Lords Prayer with a loud voice.

Our Father, which art, &c.

¶ Then the priest standing up shall say.

The sentences following are the same in all three, but the First Book adds :

*Priest.* The Lord be with you.

*Answer.* And with thy spirit.

After the sentences are the rubrics :—

1549.

¶ Then shall daily follow three Collects; the first of the Day, which shall be the same that is appointed at the Communion; the second for Peace; the third for Grace to live well. And the two last Collects shall never alter, but daily be said at Matins throughout all the year, as followeth. The Priest standing up, and saying,

Let us pray.

¶ Then the Collect of the Day.

1552.

¶ Then shall follow three Collects; the first of the Day, which shall be the same that is appointed at the Communion; the second for Peace; the third for Grace to live well. And the two last Collects shall never alter, but daily be said at Morning Prayer throughout all the year, as followeth.

SEALED BOOKS.

¶ Then shall follow three Collects; The first of the day, which shall be the same that is appointed at the Communion; The second for Peace; The third for grace to live well. And the two last Collects shall never alter, but daily be said at Morning Prayer throughout all the year, as followeth; all kneeling.

The Collects.

The three collects, viz. “of the Day,” “for Peace,” and “for Grace,” follow. Here the Service ends in Edward VI.’s Books, but in the present come the two rubrics :—

1549.

1552.

SEALED BOOKS.

¶ In Quires and Places where they sing, here followeth the Anthem.

¶ Then these five Prayers following are to be read here, except when the Litany is read; and then onely the two last are to be read, as they are there placed.

Concluding  
Prayers.

and then the five prayers mentioned, the final one being the Benediction, which closes the Service.

### THIRD.—EVENING PRAYER.

The service is thus intituled :—

Evening Prayer.

1549.

An Order for Evening song throughout the year.

1552.

An Order for Evening Prayer throughout the year.

SEALED BOOKS.

The Order for Evening Prayer daily throughout the year.

In connection with Evening Prayer the 59th Canon provides that “Every Parson, Vicar, or Curate, upon every Sunday and Holy-day, before Evening Prayer, shall, for half an hour or more, examine and instruct the youth and ignorant persons in his parish, in the Ten Commandments, the Articles of the Belief, and in the Lord’s Prayer; and shall diligently hear, instruct, and teach them the Catechism set forth in the Book of Common Prayer. And all fathers, mothers, masters, and mistresses, shall cause their children, servants, and apprentices, which have not learned the Catechism, to come to the Church at the time appointed, obediently to hear, and be ordered by the Minister, until they have learned the same. And if any Minister neglect his duty herein, let him be sharply reprovèd upon the first complaint, and true notice thereof given to the Bishop or Ordinary of the place. If, after submitting himself, he shall willingly offend therein again, let him be suspended; if so the third time, there being little hope that he will be therein reformed, then excommunicated, and so remain until he will be reformed. And likewise if any of the said fathers, mothers, masters, or mistresses, children, servants, or apprentices, shall neglect their duties, as the one sort in not causing them to come, and the other in refusing to learn, as aforesaid; let them be suspended by their Ordinaries, (if they be not children,) and if they so persist by the space of a month, then let them be excommunicated.”

Provisions of Canon 59 as to the catechising of young persons before Evening Prayer.

Final penalty to be inflicted on an offending minister is excommunication.

Comment upon these provisions and upon the notorious and almost universal disregard of them is needless, but it must be

observed that every omission to do what is herein provided is an ecclesiastical offence, subjecting on the third occasion the offender to the severest ecclesiastical punishment known.

Commence-  
ment of the  
Service in the  
present Book;

The Service now commences, as does the Morning Prayer, with the Sentences, but these are wanting in both the earliest Books, although, as will be seen by a reference to the rubric of 1552, (t) it is there said “and likewise of Evening Prayer”:—

1549.

1552.

SEALED BOOKS.

¶ At the beginning of Evening Prayer the Minister shall read with a loud voice some one, or more of these Sentences of the Scriptures, that follow. And then he shall say that which is written after the said Sentences.

and in the  
earlier Books.

Similarly the Exhortation, the Confession and the Absolution are absent from the Prayer Books prior to 1662, the Service commencing with the Lord's Prayer.

1549.

1552.

SEALED BOOKS.

¶ The Priest shall say.

¶ The Priest shall say.

¶ Then the Minister shall kneel, and say the Lords Prayer; the People also kneeling, and repeating it with him.

The Versicles are the same in all three; then the rubric:—

1549.

1552.

SEALED BOOKS.

Then Psalms in order as they be appointed in the Table for Psalms, except there be proper Psalms appointed for that day. Then a Lesson of the Old

Then Psalms in order as they be appointed in the Table for Psalms, except there be proper Psalms appointed for that day. Then a Lesson of the Old

¶ Then shall be said or sung the Psalms in order as they be appointed. Then a Lesson of the Old Testament, as is appointed: And after that, *Magnificat* (or

(t) See *ante*, p. 87.



1549.

Testament, as it is appointed likewise in the Calendar, except there be proper Lessons appointed for that day. After that, (*Magnificat anima mea Dominum*) in English, as followeth.

1552.

Testament, as is appointed likewise in the Calendar, except there be proper Lessons appointed for that day. After that, *Magnificat*, in English, as followeth.

SEALED BOOKS.

the Song of the blessed Virgin *Mary*) in English as followeth.

For the "Magnificat" there is in both the 1552 and the pre-<sup>"Magnificat."</sup> sent, but not in the 1549 Book an alternative:—

1549.

¶ Or else this Psalm.  
*Cantate Domino.*  
Psalm xcvi.

1552.

SEALED BOOKS.  
¶ Or else this Psalm; Except it be on the nineteenth day of the month, when it is read in the ordinary course of the Psalms.

After this the Service thus proceeds:—

Then a lesson of the New Testament. And after that, (*Nunc dimittis servum tuum,*) in English, as followeth.

Then a Lesson of the New Testament. And after that, (*Nunc dimittis,*) in English, as followeth.

¶ Then a Lesson of the New Testament, as it is appointed: And after that, *Nunc dimittis* (or the Song of *Simon*) in English, as followeth.

¶ Or else this Psalm.  
*Deus misereatur.*  
Psalm lxxv.

¶ Or else this Psalm; Except it be on the Twelfth day of the month.

Then the suffrages before assigned at Matins, the Clerks kneeling likewise; with three Collects. First of the Day; second of Peace; third for Aid against all Perils, as here followeth: which two last Collects shall be daily said at Even-

¶ Then shall follow the Creed, with other Prayers as is before appointed at Morning Prayer after *Benedictus*. And with three Collects: first of the Day; the second of Peace; third for Aid against all Perils, as hereafter followeth: which two

¶ Then shall be said or sung the Apostles Creed by the Minister and the people standing.

1549.

1552.

SEALED BOOKS.

song without alteration.

last Collects shall be daily said at Evening Prayer without alteration.

The Creed ;

The Creed, though directed to be said, is not printed in either of Edward VI.'s Books, as it is in the present form. After it come responses, then the Lord's Prayer, and next various responses again, all which are wanting in the earlier Books. Then follows in the present Book the rubric as to the three Collects, identical in wording with the latter part of the rubric last given of the 1552 Book.

the Collects ;

The three Collects, viz., "of the Day," "for Peace," and "for Aid against all Perils" follow. Here, and as in the Morning Prayer in Edward VI.'s Books, the Service ends, but in the present form there is the single rubric as to the Anthem, following which are the four prayers for the Sovereign, the Royal Family, the Clergy and People, and of St. Chrysostom, and the Benediction closing the Service.

and conclusion.

## FOURTH.—THE SHORTENED FORMS OF SERVICE.

The shortened forms of Service.

For convenience of comparison, here may be inserted the shortened order for Morning and Evening Prayer contained in the Schedule to 35 & 36 Vict. c. 35. (*u*) This statute, important in many respects, provides by section 2, that "the shortened order for Morning or Evening Prayer, specified in the Schedule to this Act, may on any day except Sunday, Christmas Day, Ash Wednesday, Good Friday, and Ascension Day, be used if in a cathedral in addition to, and if in a church in lieu of, the Order for Morning Prayer or for Evening Prayer respectively prescribed by the Book of Common Prayer." The shortened order is as follows :—

(*u*) See *post*, part iii. chap. 1.

“THE SHORTENED ORDER FOR MORNING PRAYER DAILY THROUGHOUT THE YEAR EXCEPT ON SUNDAY, CHRISTMAS DAY, ASH WEDNESDAY, GOOD FRIDAY, AND ASCENSION DAY.

*At the beginning of Morning Prayer the Minister shall read with a loud voice some one or more of these sentences of the Scriptures that follow.*

When the wicked Man, &c.

*A general Confession to be said of the whole Congregation after the Minister, all kneeling.*

Almighty and most merciful Father, &c.

*The Absolution, or Remission of sins, to be pronounced by the Priest alone, standing, the people still kneeling.*

Almighty God, the Father, &c.

*The people shall answer here, and at the end of all other prayers, Amen.*

*Then the Minister shall kneel, and say the Lord's Prayer with an audible voice, the people also kneeling, and repeating it with him.*

Our Father, which art in heaven, &c.

*Then likewise he shall say,*

O Lord, open thou our lips.

&c.                      &c.                      &c.

*Here, all standing up, the Priest shall say,*

Glory be to the Father, &c.

*Then shall follow one or more of the Psalms appointed. And at the end of every Psalm throughout the year, and likewise at the end of Benedicite, Benedictus, Magnificat, and Nunc dimittis, shall be repeated,*

Glory be to the Father, &c.

*Then shall be read distinctly, with an audible voice, either the First Lesson taken out of the Old Testament as is appointed in the Calendar, or the Second Lesson taken out of the New Testament, except there be a Proper Lesson assigned for that day, in*

*which case the Proper Lesson shall be read, and if there are two Proper Lessons each shall be read in its proper place; he that readeth so standing and turning himself as he may best be heard of all such as are present.*

*Note that before every Lesson the Minister shall say, Here beginneth such a Chapter, or Verse of such a Chapter, of such a Book. And after every Lesson, Here endeth the Lesson, or the First or the Second Lesson.*

*And after the Lesson, or between the First and Second Lessons, shall be said or sung in English one of the following:*

*Either the Hymn called Te Deum Laudamus.*

*We praise thee, O God, &c.*

*Or this Canticle, Benedicite, omnia opera.*

*O all ye works of the Lord, &c.*

*Or the Hymn following (except when that shall happen to be read in the lesson for the day, or for the Gospel on Saint John Baptist's Day):*

*Benedictus. St. Luke i. 68.*

*Blessed be the Lord God of Israel, &c.*

*Or this Psalm:*

*Jubilate Deo.*

*O be joyful in the Lord, all ye lands, &c.*

*Then shall be sung or said the Apostles Creed by the Minister and the people standing.*

*I believe in God, the Father Almighty, &c.*

*And after that, the people all devoutly kneeling, the Minister shall pronounce with a loud voice,*

*The Lord be with you.*

*Answer. And with thy spirit.*

*Minister. Let us pray.*

*Then the Priest shall say,*

*O Lord shew thy mercy upon us.*

*&c.*

*&c.*

*&c.*

*Then shall follow three Collects. The first of the day, which*



*shall be the same that is appointed at the Communion ; the second for Peace ; the third for grace to live well ; and the two last Collects shall never alter, but daily be said at Morning Prayer throughout all the year, as followeth, all kneeling.*

*The second Collect for Peace.*

O God, who art the Author of peace, &c.

*The third Collect for Grace.*

O Lord, our heavenly Father, &c.

*Here may follow an Anthem or Hymn :*

*Then these two Prayers following :*

*A prayer of Saint Chrysostome.*

Almighty God, who hast given us grace, &c.

*2 Corinthians, xiii.*

The grace of our Lord Jesus Christ, &c.

*Here endeth the Shortened Order of Morning Prayer.*

THE SHORTENED ORDER FOR EVENING PRAYER  
DAILY THROUGHOUT THE YEAR, EXCEPT ON SUN-  
DAY, CHRISTMAS DAY, ASH WEDNESDAY, GOOD  
FRIDAY, AND ASCENSION DAY.

*At the beginning of Evening Prayer the Minister shall read with a loud voice some one or more of these sentences of the Scriptures that follow :*

When the wicked man, &c.

*A general Confession to be said of the whole Congregation, after the Minister, all kneeling.*

Almighty and most merciful Father, &c.

*The Absolution, or Remission of sins, to be pronounced by the Priest alone, standing ; the people still kneeling.*

Almighty God, the Father, &c.

*Then the Minister shall kneel and say the Lord's Prayer : the people also kneeling, and repeating it with him.*

Our Father, which art in heaven, &c.

*Then likewise he shall say,*

O Lord, open thou our lips.

*Here, all standing up, the Priest shall say,*

Glory be to the Father, &c.

*Then shall be said or sung one or more of the Psalms in order as they be appointed. Then either a Lesson of the Old Testament as is appointed, or a Lesson of the New Testament as it is appointed, except there be a Proper Lesson assigned for that day, in which case the Proper Lesson shall be read, and if there are two Proper Lessons each shall be read in its proper place; and after the Lesson, or between the First and Second Lessons, shall be said or sung in English one of the following:*

*Either Magnificat, or the Song of the Blessed Virgin Mary in English, as follows:*

*Magnificat. St. Luke i.*

My soul doth magnify the Lord, &c.

*Or this Psalm (except it be on the nineteenth day of the month, when it is read in the ordinary course of the Psalms).*

*Cantate Domino. Psalm xcvi.*

O sing unto the Lord a new song, &c.

*Or Nunc dimittis (or the Song of Simeon), as followeth:*

*Nunc Dimittis. St. Luke ii. 29.*

Lord, now lettest thou thy servant, &c.

*Or else this Psalm (except it be on the twelfth day of the month):*

*Deus misereatur. Psalm lxxv.*

God be merciful unto us, and bless us, &c.

*Then shall be said or sung the Apostles Creed by the Minister and the people, standing:*

I believe in God the Father Almighty, &c.

*And after that, the people all devoutly kneeling, the Minister shall pronounce with a loud voice:*

The Lord be with you.

*Answer. And with thy spirit.*

*Minister. Let us pray.*

*Then the Priest shall say,*

O Lord, shew thy mercy upon us,

&c.                      &c.                      &c.

*Then shall follow three Collects. The first of the day; the second for Peace; the third for aid against all perils, as hereafter followeth; which two last Collects shall be daily said at Evening Prayer without Alteration.*

*The second Collect at Evening Prayer.*

O God, from whom all holy desires, &c.

*The third Collect for Aid against all Perils.*

Lighten our darkness, &c.

*Here may follow an Anthem or Hymn.*

*A Prayer of Saint Chrysostome.*

Almighty God, who hast given us grace, &c.

2 Corinthians, xiii.

The grace of our Lord Jesus Christ, &c.

*Here endeth the Shortened Order of Evening Prayer."*

# FIFTH.—THE ATHANASIAN CREED.

The rubrics relating to this vary considerably :—

The Athanasian Creed.

1549.

¶ In the feasts of Christmas, the Epiphany, Easter, the Ascension, Pentecost, and upon Trinity Sunday, shall be sung or said immediately after *Benedictus*, this Confession of our Christian Faith.

1552.

In the feasts of Christmas, the Epiphany, Saint Matthias, Easter, the Ascension, Pentecost, Saint John Baptist, Saint James, Saint Bartholomew, Saint Matthew, Saint Simon and Jude, Saint Andrew, and Trinity Sunday, shall be sung or said immediately after *Benedictus*, this Confession of our Christian Faith.

SEALED BOOKS.

¶ Upon these Feasts; Christmas-day, the Epiphany, Saint Matthias, Easter-day, Ascension-day, Whitsun-day, Saint John Baptist, Saint James, Saint Bartholomew, Saint Matthew, Saint Simon and Saint Jude, Saint Andrew, and upon Trinity Sunday shall be sung or said at Morning Prayer, instead of the Apostles Creed,

1549.

1552.

SEALED BOOKS.

this Confession of our Christian Faith, commonly called the Creed of Saint *Athanasius*, by the Minister and People standing.

Discussion in  
1689.

In 1689 there was a considerable discussion among the prelates appointed to review the Liturgy, as to whether the Athanasian Creed should be retained or not. It was finally determined to retain it, "lest that the wholly rejecting it should by unreasonable persons be imputed to Socinianism,"<sup>(v)</sup> but that the rubric should be altered so as to qualify the full signification of the damnable clauses. The proposed rubric is stated by Dr. Waterland to have been thus: "Upon these Feasts, Christmas-day, Easter-day, Ascension-day, Whitsun-day, Trinity-Sunday, and upon All-Saints, shall be said at Morning-Prayer, by the Minister and People standing, instead of the Creed, commonly called the Apostles' Creed, this Confession of our Christian Faith, commonly called the Creed of St. Athanasius: the articles of which ought to be received and believed as being agreeable to the Holy Scriptures. And the condemning clauses are to be understood as relating only to those who obstinately deny the substance of the Christian Faith."<sup>(w)</sup>

To the Creed there is subjoined in the two earlier Books, but not in the present one, a rubric:—

1549.

1552.

SEALED BOOKS.

Thus endeth the Order of Matins and Evensong through the whole Year.

¶ Thus endeth the Order of Morning and Evening Prayer through the whole Year.

(v) "Life of Baxter," by Dr. Calamy, vol. i. p. 455.

(w) "On the Athanasian Creed," Waterland, vol. iv. pp. 305-6, and note.



SIXTH.—THE LITANY.

On reference to the “Table of Contents” of the various Prayer Books, (*x*) it will be noted that while in the First Book of Edward VI. the Communion Service comes immediately after that for Morning and Evening Prayer, and is succeeded by the Litany, in the 1552 and the present Book this relative order is reversed, the Litany being the former.

The rubric, or introductory direction, is:—

1549.

The Litany and Suffrages.

1552.

Here followeth the Litany, to be used upon Sundays, Wednesdays, and Fridays, and at other times, when it shall be commanded by the Ordinary.

SEALED BOOKS.

¶ Here followeth the Litany or General Supplication(*y*) to be sung or said after Morning Prayer upon Sundays, Wednesdays and Fridays, and at other times, when it shall be commanded by the Ordinary.

The Litany.

The Litany is a distinct service.

Performance of the Litany—place and posture;

The Litany is manifestly in itself a distinct service, and may be used as such. And till the review in 1661 it was evidently designed so to be used, as may be gathered from the rubric before the Communion in all the old Common Prayer Books, which orders that after Morning Prayer “the people being called together by the ringing of a bell and assembled in the church, the English Litany shall be said after the accustomed manner.”

But the present Book incorporates it upon certain occasions with the Morning Prayer into one office; and it would seem from various of the bishops’ Injunctions and Inquiries of Elizabeth’s reign, that this was a common practice even then.

As to the place where, and posture in which, the Litany is to be performed, neither the existing Prayer Book nor the earlier Books give directions. In the Injunctions both of Edward VI. and of Elizabeth (*z*) there are directions upon this head, no. 23 of the former

(*x*) *Ante*, pp. 70-1.

(*y*) As to this expression, see *ante*, p. 44.

(*z*) See *post*, part iii, chap. iii.

enjoining that “the priests with other of the quire shall kneel in the midst of the church, and sing or say, plainly and distinctly, the Litany, which is set forth in English;” which direction is repeated, *iisdem verbis*, in the 18th of Elizabeth’s Injunctions.

person;

There is no direction as to the person by whom the Litany is to be recited, whether the whole or the leading sentences. Consequently, in some places the service is performed by the choir without the active intervention of the minister, a practice which “is very unjustifiable, and deservedly gives offence to all such as are zealous for regularity and decency in divine worship.” (a)

manner.

As to the manner of performance, the rubric directs it “to be sung or said.” Therefore either will be perfectly lawful.

Concluding  
prayers.

In the existing Prayer Book the Litany contains and ends with the Benediction, which is wanting in the earlier Books; and the “Prayers and Thanksgivings upon several occasions,” though a part of the Litany, are printed as a distinct section, viz. No. 14, but in the earlier Books they are interpolated in the Litany immediately previous to the Prayer of St. Chrysostom. Of these the Prayers for Rain, for Fair Weather, in Time of Dearth, in Time of War, in Time of Plague, are the same in all the Books, but all the remainder, as well as the Thanksgivings, were added in 1661.

#### SEVENTH.—THE COMMUNION SERVICE.

The Commu-  
nion Service.

This Service is composed of two distinct parts, viz. first, the collects, epistles, and gospels; and secondly, the Order for the Holy Communion. For many reasons the whole may be considered to constitute together one of “the ordinary daily services.” It will however be advisable to treat of the latter part, which specially concerns the Holy Supper, in the next chapter, with Rites and Sacraments.

(a) Wheatly, “The Book of Common Prayer,” 143.

As to the former part, the introductory heading and rubric is as follows:—

1549.

The Introits, Collects, Epistles, and Gospels, to be used at the Celebration of the Lord's Supper and Holy Communion, through the Year: with proper Psalms and Lessons for divers Feasts and Days.

1552.

The Collects, Epistles, and Gospels, to be used at the Celebration of the Lord's Supper and Holy Communion, through the Year.

SEALED BOOKS.

The Collects, Epistles, and Gospels to be used throughout the year.

¶ Note, that the Collect appointed for every Sunday, or for any Holiday that hath a Vigil or Eve, shall be said at the Evening Service next before.

In the First Prayer Book Introits were appointed. These were psalms sung immediately before the collect, containing something prophetical of the evangelical history used upon each Sunday and holyday, or in some way or other proper to the day. In the present day the want of them has to be supplied by the singing of the Sanctus in cathedrals, and part of a psalm in metre in parish churches, frequently very injudiciously selected.(b)

Introits;

now replaced by hymns and psalms.

There are no directions as to the posture to be assumed by either the minister or the people during the reading of the epistle and gospel, or as to the place from which they are to be read. However, in *Elphinstone v. Purchas*, (c) where one of the charges was that the defendant "permitted the epistle to be read by a minister standing with his back to the people," Sir Robert Phillimore held that this offence, "though perhaps not governed by any positive order in a rubric, is obviously contrary to the intent of the Prayer Book, the epistle not being a prayer addressed to God, but a portion of the Scripture read to the people."

Posture of the minister during the epistle.

It is the custom in many places to say or sing between the epistle and gospel, "Glory be to Thee, O God," and after the gospel, "Thanks be to God," "Thanks be to Thee, O Lord,

Versicles in connection with the epistle and gospel.

(b) Wheatly, "The Book of Common Prayer," 175-7.

(c) L. R. 3 Adm. & Eccl. 66, 111.

for thy holy gospel," or "Thanks be to Thee, O Lord;" but these practices, though perhaps admissible as being merely subsidiary to the service, (*d*) are neither necessary nor enjoined. Very frequently, too, the minister says after the gospel, "Here endeth the gospel," but this not only is not directed by the rubric, but also seems impliedly discountenanced by it, since it is expressly commanded, that "the epistle ended, he shall say, 'Here endeth the epistle.'" *Expressio unius est exclusio alterius.*

#### EIGHTH.—THE SERMON.

The sermon belongs to the Communion Service.

"The sermon is part of the Communion Service." (*e*) Accordingly, if the Communion Service be commenced, it ought to be completely performed, including the sermon or homily, since the minister may not abridge or omit any portion whatever of a service: (*f*)

Whether it may be used with other services, *quære*.

Whether a sermon is an essential portion of, or may be used with, either of the other services is doubtful, though it is usually delivered both at Morning and Evening Service. The statute 1 & 2 Vict. c. 106, s. 80, enacts "that it shall be lawful for the bishop in his discretion to order that there shall be two full services, each of such services, if the bishop shall so direct, to include a sermon or lecture on every Sunday throughout the year or any part thereof, in the church or chapel of every or any benefice within his diocese, whatever may be the annual value or the population thereof, and also in the church or chapel of every parish or chapelry where a benefice is composed of two or more parishes or chapelries in which there shall be a church or chapel, if the annual value of the benefice arising from that parish or chapelry shall amount to £150, and the population of that parish or chapelry shall amount to 400 persons, provided always that nothing herein contained shall be taken to repeal or affect the

(*d*) See *post*, chap. vi.

(*e*) Per the Bishop of Exeter in the judgment *re Blunt*, 2 Steph. Eccl. Stat. 2046-2062.

(*f*) See *ante*, pp. 35-6.



provisions of an act passed in the 58th year of George III., by which the bishop of any diocese is empowered to direct the performance of a third or additional service in the several churches or chapels within his diocese, under the circumstances therein mentioned."

There is no statutory or rubrical direction, as to the precise spot from which the sermon is to be delivered. As to the pulpit, the 24th of Elizabeth's Injunctions (*g*) directs "That the church-wardens at the common charge of the parishioners in every church, shall provide a comely and honest pulpit, to be set in a convenient place within the same, and to be there seemly kept for the preaching of God's Word;" and the same provision is contained in the 83rd Canon.

Where the sermon is to be delivered.

A species of introductory prayer is often delivered immediately before the sermon, but this is totally unauthorized. "This prayer of the minister before the sermon, be it of what sort or size it will, is not only contrary to the intention of the Church, but also to the law of the land." (*h*)

Prayer before the sermon.

In the 55th Canon, (*i*) however, is contained a "bidding" Prayer, which, or one to a similar effect, is to be used before all sermons, lectures, and homilies, and to be concluded by the Lord's Prayer.

"Bidding" prayer.

#### SECTION IV.—*The Remainder of the Book of Common Prayer.*

F the various Services, Rites, or Ceremonies for which provision is made in the Book of Common Prayer, there now remain for consideration the portions subjoined:—

Other portions of the Common Prayer.

1549.

1552.

SEALED BOOKS.

7. Of Baptism, both public and private.

13. Baptism, both public and private.

17. The order of Baptism, both public and private.

(*g*) See *post*, part iii. chap. iii. (*h*) Bisse, 'Common Prayer,' 186-8.

(*i*) See *post*, part iii. chap. v.

1549.

8. Of Confirmation, where also is a Catechism for children.

9. Of Matrimony.

10. Of Visitation of the Sick and Communion of the same.

11. Of Burial.

12. The Purification of Women.

13. A declaration of Scripture, with certain prayers to be used the first day of Lent, commonly called Ash Wednesday.

14. Of Ceremonies omitted or retained.

15. Certain notes for the more plain explication and decent ministration of things contained in this book.

1552.

14. Confirmation, where also is a Catechism for children.

15. Matrimony.

16. Visitation of the Sick.

17. The Communion of the Sick.

18. Burial.

19. The Thanksgiving of Women after Childbirth.

20. A Commination against sinners, with certain Prayers to be used divers times in the year.

21. The form and manner of making and consecrating of Bishops, Priests, and Deacons.

SEALED BOOKS.

18. The order of Baptism for those of riper years.

19. The Catechism, with the Order for Confirmation of Children.

20. Matrimony.

21. Visitation of the Sick and Communion of the Sick.

22. Burial.

23. Thanksgiving for Women after child bearing.

24. A Commination or Denouncing of God's anger and judgments against sinners.

25. The Psalter.

26. The Order of Prayer to be used at Sea.

27. A Form and Manner of Ordaining Bishops, Priests, and Deacons.

As to these, the greater part, viz. the subjects of Baptism, Confirmation, Matrimony, Visitation of the Sick, Burial, and the Ordination Service, together with the Administration of the Holy Communion, will be more conveniently dealt with in the next chapter, these being or resembling Rites or Sacraments.

With regard to the rest, few remarks need be made. Sections 14 and 15 of the contents of the 1549 Book have already been considered in connection with the introductory part of the Services. (*k*) The other portions are the following :—

(*k*) See *ante*, pp. 80-85.

I. *Purification of Women.*

1549.

*The Order of the Purification of Women.*

The woman shall come into the church, and there shall kneel down in some convenient place, nigh unto the quire door; and the Priest, standing by her, shall say these words, or such like, as the case shall require.

Forasmuch as it hath pleased Almighty God of his goodness to give you safe deliverance, and your child baptism, and hath preserved you in the great danger of childbirth; ye shall therefore give hearty thanks unto God, and pray.

Then shall the Priest say this Psalm. *Levavi oculos.* Psalm cxxi.

1552.

*The Thanksgiving of Women after Childbirth, commonly called the Churching of Women.*

The woman shall come into the church, and there shall kneel down in some convenient place, nigh unto the place where the table standeth; and the Priest, standing by her, shall say these words, or such like, as the case shall require.

Forasmuch as it hath pleased Almighty God of his goodness to give you safe deliverance, and hath preserved you in the great danger of childbirth: ye shall therefore give hearty thanks unto God, and pray.

Then shall the Priest say this Psalm. *Levavi oculos.* Psalm cxxi.

SEALED BOOKS.

*The Thanksgiving of Women after Childbirth, commonly called, The Churching of Women.*

¶ The woman at the usual time after her delivery, shall come into the Church decently apparelled, (kk) and there shall kneel down in some convenient place, as hath been accustomed, or as the Ordinary shall direct: And then the Priest shall say unto her,

*Forasmuch as it hath pleased Almighty God of his goodness to give you safe deliverance, and hath preserved you in the great danger of childbirth, you shall therefore give hearty thanks unto God, and say,*

(¶ Then shall the Priest say Psalm cxvi. *Dilexi quoniam.*)

¶ Or Psalm cxxvii. *Nisi Dominus.*

Purification of Women.

The Service itself is the same in all three Books, except that in the two earlier the Lord's Prayer ends with "And lead us not into temptation," and the word "priest" is used through-

(kk) See Gibson's Codex, 451. As to the *time* for performing this service, see Mant, "*Horæ Liturgicæ*," p. 51; and as to the *place*, see Jebb, "*On the Choral Service*," p. 532; and Cardwell's "*Conferences*," p. 362.

out, instead of "minister." The concluding rubric also varies, thus :—

1549.

The woman that is purified must offer her chrism, and other accustomed offerings; and if there be a communion, it is convenient that she receive the holy communion.

1552.

The woman that cometh to give her thanks, must offer accustomed offerings; and if there be a communion, it is convenient that she receive the holy communion.

SEALED BOOKS.

¶ The woman that cometh to give her thanks, must offer accustomed offerings, and if there be a Communion, it is convenient that she receive the holy Communion.

A Commination.

## II. *A Commination.*

1549.

*The first Day of Lent, commonly called Ash-Wednesday.*

¶ After Matins ended, the people being called together by the ringing of a bell, and assembled in the church, the English Litany shall be said after the accustomed manner; which ended, the Priest shall go into the pulpit, and say thus.

1552.

*A Commination against Sinners, with certain Prayers to be used divers times in the year.*

After Morning Prayer ended, the people being called together by the ringing of a bell, and assembled in the church, the English Litany shall be said after the accustomed manner; which ended, the Priest shall go into the pulpit, and say thus.

SEALED BOOKS.

*A Commination, or Denouncing of Gods anger and judgements against sinners, with certain prayers to be used on the first day of Lent, and at other times, as the Ordinary shall appoint.*

¶ After Morning Prayer the Litany ended according to the accustomed manner, the Priest shall in the reading Pew or Pulpit, say.

The Service is literally the same in all the three editions, with the exceptions that the closing benediction is not found in the two earlier Books, and that in lieu of the last rubric but one the First Book directs, "Then shall this Anthem be said or sung."

The Psalter.

## III. *The Psalter.*

Prayers to be used at Sea.

## IV. *The Order of Prayers to be used at Sea.*

Both these are absent from the earlier editions of the Common Prayer, and were added in 1662.



CHAPTER IV.

rites and sacraments.

SECTION I.—*Explication of Terms.*



T is very difficult, if not absolutely impossible, to frame such a definition of the term “rite,” as will suffice to separate it from “service” on the one hand, and “ceremony” on the other. In *Martin v. Mackonochie*, when in the Arches

Definition of  
“Rite.”

Court, (*l*) it was contended, on behalf of the defendant, that the three terms are co-extensive in meaning, and interchangeable. Sir Robert Phillimore, however, denied this proposition, and after a careful examination of authorities, he came to the conclusion that a rite and a ceremony are but portions or elements of a service, and also that there is a legal distinction between the two, in that “the former consists in services expressed in words, the latter in gestures or acts preceding, accompanying, and following the utterance of these words.” (*m*)

Even this seems to leave something wanting. A rite, both in common language and as employed by theologians, usually imports something more than mere words occurring in the course of a service. The words to constitute a rite must have a definite doctrinal signification, and they must amount, if not to an

True import of  
the term.

(*l*) L. R. 2 Adm. & Eccl. 129, 130.

(*m*) L. R. 2 Adm. & Eccl. 135-6.

entire service, at least to a distinct and separable portion of one. It is only in this way that the expressions "Rite of Confirmation," "Rite of Marriage," and the like, can have a meaning.

Buck, in his well-known "Theological Dictionary," (*mm*) defines Rite very shortly, as "a solemn action of religion, an external ceremony."

Ritual.

Ritual the same author describes, as "a book directing the order and manner to be observed in performing divine service in a particular church, diocese, or the like."

The term is undoubtedly used in this sense; but as a word of Ecclesiastical Law or theology it is much more accurately defined by Blunt, thus:—"Divine worship, which is the necessary accompaniment of a belief in the existence of God, may be divided into two parts: (1) Internal worship, consisting of the feelings of love, admiration, confidence, and submission to the Deity as a superior being; and (2) external worship, or the manifestation of those feelings by outward signs, such as prayer, prostrations, genuflexions, &c. The latter is expressed by the term Ritual, which has therefore been defined as 'the external body of words and actions by which worship is expressed and exhibited before God and man.' " (*n*)

Sacrament.

*Sacrament.* In classical Latin, the word "sacramentum" meant (1) the pecuniary recognizances deposited in a sacred place by each of the litigants in a suit at law (*o*), and (2) the sacred military oath by which soldiers were bound to allegiance and obedience. (*p*) This oath was taken upon the "signa militaria," or consecrated "signs," which surmounted each regimental banner. It was probably an association between the sacred signs and the sacred deposits, which connected these two senses together under the same word. The early eccle-

(*mm*) Buck, "Theol. Dict." p. 690.

(*n*) Blunt's "Theol. Dict." p. 652.

(*o*) Varro, de Lingua Latin. lib. iv.; Festus de Verb. Significat. s. v.

(*p*) Liv. ix. 29, xxii. 36; Festus de Verb. Significat. s. v.; Aul. Gellius, xvi. 4.

siastical use of the word had reference most frequently to baptism, doubtless from the idea of enrolling a convert under Christ's banner by a vow of obedience, as the soldier was enrolled by his "sacramentum."

A sacrament is "a visible sign of an invisible grace, instituted for our justification." (g)

A sacrament is "an outward and visible sign of an inward and spiritual grace given unto us, ordained by Christ Himself as a means whereby we receive the same, and a pledge to assure us thereof." (r)

It may here be observed that the rule—which has already been mentioned, (s) and will be considered at length in the next chapter (t)—as to ceremonial, does not apply in all its strictness to matters of ritual and doctrine. In *Sheppard v. Bennett*, (u) the Privy Council, after stating the rule laid down in *Westerton v. Liddell*, as to ceremonial, said: "If the minister be allowed to introduce at his own will variations in the rites and ceremonies, that seem to him to interpret the doctrine of the service in a particular direction, the service ceases to be what it was meant to be, common ground on which all Church people may meet, though they differ about some doctrines. But the Church of England has wisely left a certain latitude of opinion in matters of belief, and has not insisted on a rigorous uniformity of thought which might reduce her communion to a narrow compass." But it need hardly be added, that though this latitude may exist, yet there are the cardinal and fundamental doctrines of the Church, which must be received and interpreted exactly and literally as the Church receives and interprets them.

The rule in *Westerton v. Liddell* does not apply to ritual.

(g) Catech. Trident. II. i. 4.

(r) Catech. in Book of Com. Prayer. Blunt's "Theol. Dict." p. 669.

(s) *Ante*, p. 35.

(t) Chap. v. s. 2.

(u) Second Appeal, L. R. 4 P. C. 371, 404.

SECTION II.—*The History of the Rites and Sacraments.*

 HIS does not require a separate exposition. In the last chapter has been given a brief account of the Liturgies, and of the alteration from time to time made therein. This must suffice for rites and sacraments also, because, as far as the present work is concerned, the history of the former is the history of the latter. To go more deeply into the origin and development of rites and sacraments would be to investigate the nature of the doctrines held by the Anglican Church, a matter altogether outside the Law relating to the Conduct of Public Worship.

SECTION III.—*The Communion Service.*

The Commu-  
nion Service.

 ERY considerable alterations have taken place in the order of this Service, in the prayers to be used at it, and in the vestments and ornaments in connection with it. The opening rubrics, however, are substantially the same in all three Books.

Opening  
Rubrics.

1549.

*The Supper of the Lord, and the Holy Communion, commonly called the Mass.*

¶ So many as intend to be partakers of the holy Communion, shall signify their names to the Curate over night, or else in the morning, afore the beginning of Matins, or immediately after.

¶ And if any of those be an open and notorious evil liver,

1552.

*The Order for the Administration of the Lord's Supper or Holy Communion.*

¶ So many as intend to be partakers of the holy Communion, shall signify their names to the Curate over night, or else in the morning, afore the beginning of Morning Prayer, or immediately after.

¶ And if any of those be an open and notorious evil liver, so

SEALED BOOKS.

*The Order for the Administration of the Lords Supper or Holy Communion.*

¶ So many as intend to be partakers of the holy Communion shall signifie their names to the Curate at least sometime the day before.

¶ And if any of those be an open and notorious evil liver,



1549.

so that the congregation by him is offended, or have done any wrong to his neighbours by word or deed; the Curate shall call him and advertise him in any wise not to presume to the Lord's table, until he have openly declared himself to have truly repented and amended his former naughty life, that the congregation may thereby be satisfied, which afore were offended; and that he have recompensed the parties, whom he hath done wrong unto, or at the least be in full purpose so to do, as soon as he conveniently may.

¶ The same order shall the Curate use with those betwixt whom he perceiveth malice and hatred to reign; not suffering them to be partakers of the Lord's table, until he know them to be reconciled. And if one of the parties so at variance be content to forgive from the bottom of his heart all that the other hath trespassed against him, and to

1552.

that the congregation by him is offended, or have done any wrong to his neighbours by word or deed; the Curate, having knowledge thereof, shall call him and advertise him in any wise not to presume to the Lord's table, until he have openly declared himself to have truly repented and amended his former naughty life, that the congregation may thereby be satisfied, which afore were offended; and that he have recompensed the parties, whom he hath done wrong unto, or at the least declare himself to be in full purpose so to do, as soon as he conveniently may.

¶ The same order shall the Curate use with those betwixt whom he perceiveth malice and hatred to reign; not suffering them to be partakers of the Lord's table, until he know them to be reconciled. And if one of the parties so at variance be content to forgive from the bottom of his heart all that the other hath trespassed against him, and to

SEALED BOOKS.

or have done any wrong to his neighbours by word or deed, so that the Congregation be thereby offended; the Curate having knowledge thereof, shall call him and advertise him, that in any wise he presume not to come to the Lords table, until he hath openly declared himself to have truly repented and amended his former naughty life, that the Congregation may thereby be satisfied, which before were offended; and that he hath recompensed the parties to whom he hath done wrong, or at least declare himself to be in full purpose so to do, as soon as he conveniently may.

¶ The same order shall the Curate use with those betwixt whom he perceiveth malice and hatred to reign; not suffering them to be partakers of the Lords Table, until he know them to be reconciled. And if one of the parties so at variance be content to forgive from the bottom of his heart all that the other hath trespassed against him, and to

1549.

make amends for that he himself hath offended; and the other party will not be persuaded to a godly unity, but remain still in his frowardness and malice: the Minister in that case ought to admit the penitent person to the holy Communion, and not him that is obstinate.

1552.

make amends for that he himself hath offended; and the other party will not be persuaded to a godly unity, but remain still in his frowardness and malice: the Minister in that case ought to admit the penitent person to the holy Communion, and not him that is obstinate.

SEALED BOOKS.

make amends for that he himself hath offended; and the other party will not be persuaded to a godly unity, but remain still in his frowardness and malice: the Minister in that case ought to admit the penitent person to the holy Communion, and not him that is obstinate. Provided that every Minister so repelling any, as is specified in this, or the next precedent Paragraph of this Rubrick, shall be obliged to give an account of the same to the Ordinary within fourteen dayes after at the farthest. And the Ordinary shall proceed against the offending person according to the Canon.

All persons of full age entitled to the Holy Communion, unless grave reasons for exclusion.

Every person over the age of fourteen who has been confirmed, or is ready to be confirmed, is entitled to be admitted to the Lord's Supper, unless there are sufficient reasons for exclusion. What will be sufficient reasons is very doubtful. Bishop Wilson, (x) in a sentence in respect of this matter, ordered and required "that neither the said Mr. Archdeacon, nor any other minister do for the future presume to repel any persons from the Holy Sacrament whose crimes have not become notorious, either by their own confession, by presentment, or adjudged to be so by some sentence of law."

(x) "Life of Bishop Wilson," by Stowel, 345-6.

Dr. Stephens, in his very learned edition of the Prayer Book, says broadly, "In fact the curate has no power to try the question whether a person is or is not an open or notorious evil liver, or offensive to the congregation; he cannot enforce the attendance of a witness; or impose an oath, if witnesses voluntarily tender themselves to be examined." (y)

Dr. Stephens' comments.

But as he subsequently points out, "It is clear that if a person were to present himself to receive the Communion when in a state of intoxication, or with an irreverence of manner, it would be the imperative duty of the churchwardens to remove such a disturber from the church. And at common law a person disturbing divine service can be removed by any person there present, upon the same principle which allows a man to abate a nuisance." (z)

Then follows a rubric, found in the First Book only, which has an important bearing upon the question of vestments. It is this—

The Vestments Rubric of the First Prayer Book.

¶ Upon the day, and at the time appointed for the ministration of the holy Communion, the Priest that shall execute the holy ministry shall put upon him the vesture appointed for that ministration, that is to say, a white albe plain, with a vestment or cope. And where there be many Priests or Deacons, there so many shall be ready to help the Priest in the ministration, as shall be requisite; and shall have upon them likewise the vestures appointed for their ministry, that is to say, albes with tunicles. Then shall the Clerks sing in English, for the office, or introit, (as they call it), a Psalm appointed for that day.

Here other vestments than, or additional to, the surplice are manifestly enjoined. The Ornaments rubric of the present Book directs the vestments to be retained, "which were in use by authority of Parliament, in the second year of King Edward VI." Accordingly in *Elphinstone v. Purchas*, (r) Sir Robert Phillimore decided that ministers below the order of bishops

(y) "The Book of Common Prayer," by Dr. Stephens, p. 1073.

(z) *Ibid.* p. 1081; *Glover v. Hynde*, 1 *Mod.* 168.

(r) L. R. 3 *Adm. & Eccl.* 66.

when officiating at the Holy Communion may wear the cope, the chasuble, the white albe plain, the surplice, and tunicle. But upon appeal (*s*) the Privy Council decided that the surplice alone is allowable. The whole subject is considered fully, *post*, in chapter vii. on "Vestments."

Table Rubric.

The next rubric is in these words:—

1549.

The Priest, standing humbly afore the midst of the altar, shall say the Lord's Prayer, with this Collect.

1552.

¶ The table, having at the Communion-time a fair white linen cloth upon it, shall stand in the body of the church, or in the chancel, where Morning Prayer and Evening Prayer be appointed to be said.

And the Priest, standing at the north side of the table, shall say the Lord's Prayer with this Collect following.

SEALED BOOKS.

¶ The Table at the Communion-time having a fair white linen cloth upon it, shall stand in the body of the Church, or in the Chancel, where Morning and Evening Prayer are appointed to be said. And the Priest standing at the north side of the Table shall say the Lords Prayer, with the Collect following, the people kneeling.

Ornaments of the Table.

This rubric has produced a great amount of dispute and litigation. The first part will be considered at length, *post*, chapter viii. section 4, on "Ornamentation in connection with the Communion Service." Here it may be briefly summarised—(1) That the table must at the Communion time have some covering upon it (*t*); (2) That it may be provided with coverings of various colours and materials (*u*); (3) That the coverings must be plain and without fringes or embroidery. (*v*)

Nature of the Table.

It may also be noted that it is a "table," and not an

(*s*) *Hebbert v. Purchas*, L. R. 3 P. C. 605.

(*t*) *Elphinstone v. Purchas*, L. R. 3 Adm. & Eccl. 66.

(*u*) *Westerton v. Liddell*, Moore, Special Report, p. 188.

(*v*) *Beal v. Liddell*, Report, pp. 188, 189.



“altar,” (*w*) and that it must be of wood, not stone, (*x*) and reasonably portable. (*y*)

As to the second part of the rubric, “the Prayer of Consecration is to be used at the north side of the table, so that the minister looks south, whether a broader or narrower side of the table be towards the north.” (*z*)

Position of the minister.

Next in all the editions comes the First Collect, which in the First Book was followed by “the psalm appointed for the Introit,” and by three responses, but which in the 1552 and the present Book is succeeded by the Ten Commandments. These are not found in the First Book, but, in lieu, the “Gloria in Excelsis,” which occurs in the other two Books very nearly at the end of the service, is placed here. Then these rubrics:—

The First Collect.

Introit.

Ten Commandments.

1549.

Then shall follow the Collect of the day, with one of these two Collects following, for the king.

1552.

¶ Then shall follow the Collect of the day, with one of these two Collects following, for the king; the Priest standing up and saying.

SEALED BOOKS.

¶ Then shall follow one of these two Collects for the King, the Priest standing as before, and saying.

The two collects are the same. Then the Service proceeds:—

1549.

The Collects ended, the Priest, or he that is appointed, shall read the Epistle in a place assigned for the purpose, saying,

*The Epistle of Saint Paul, written in the chapter of to the*

1552.

¶ Immediately after the Collects, the Priest shall read the Epistle, beginning thus:

¶ *The Epistle, written in the chapter of*

SEALED BOOKS.

¶ Then shall be said the Collect of the day. And immediately after the Collect the Priest shall read the Epistle, saying, *The Epistle* [or, *The portion of Scripture appointed for the Epistle*] *is written in*

(*w*) *Ibid.*; *Sheppard v. Bennett*, Second Appeal, L. R. 4 P. C. 371, 410-2.

(*x*) *Faulkner v. Litchfield*; *Beal v. Liddell*, Moore, Special Report, 185. See *post*, chap. viii, s. 4.

(*y*) *Westerton v. Liddell*, Moore, Special Report, 185-6.

(*z*) L. R. 3 P. C. 663.

1549.

The Minister then shall read the Epistle. Immediately after the Epistle ended, the Priest, or one appointed to read the Gospel, shall say,

*The holy Gospel, written in the chapter of*

The Clerks and people shall answer,  
*Glory be to thee, O Lord.*

The Priest or Deacon then shall read the Gospel. After the Gospel ended, the Priest shall begin,

*I believe in one God.*

The Clerks shall sing the rest.

1552.

And the Epistle ended, he shall say the Gospel, beginning thus :

*The Gospel, written in the chapter of*

And the Epistle and Gospel being ended, shall be said the Creed.

*I believe in one God.*

SEALED BOOKS.

*the — Chapter of — beginning at the — verse. And the Epistle ended, he shall say, Here endeth the Epistle. Then shall he read the Gospel (the people all standing up) saying, The Holy Gospel is written in the — Chapter of — beginning at the — verse. And the Gospel ended, shall be sung or said the Creed following, the people still standing, as before.*

The Creed.

After the Creed, the Service is thus continued in the First Book :—

¶ After the Creed ended, shall follow the Sermon or Homily, or some portion of one of the Homilies, as they shall be hereafter divided : wherein if the people be not exhorted to the worthy receiving of the holy sacrament of the body and blood of our Saviour Christ, then shall the Curate give this Exhortation to those that be minded to receive the same.

Exhortation.

The Exhortation in the First Book is the same as that in the present Book, but is there found much later :—

¶ In cathedral churches, or other places where there is daily communion, it shall be sufficient to read this Exhortation above written once in a month. And in parish churches, upon the week days, it may be left unsaid.

¶ And if upon the Sunday or holyday the people be negligent to come to the communion, then shall the Priest earnestly exhort his parishioners to dispose themselves to the receiving of the holy communion more diligently, saying these or like words unto them.

This Exhortation is the same in substance as that directed in the present Book, for use under similar circumstances.

The Service then proceeds thus :—

1549.

¶ Then shall follow for the offertory one or more of these sentences of holy scripture, to be sung whiles the people do offer; or else one of them to be said by the minister immediately afore the offering.

1552.

After the Creed, if there be no Sermon, shall follow one of the Homilies already set forth, or hereafter to be set forth by common authority.

After such Sermon, Homily, or Exhortation, the Curate shall declare unto the people whether there be any holydays or fasting days the week following; and earnestly exhort them to remember the poor, saying one or more of these sentences following, as he thinketh most convenient by his discretion.

SEALED BOOKS.

¶ Then the Curate shall declare unto the people what holydayes, or fasting-dayes are in the week following to be observed. And then also (if occasion be) shall notice be given of the Communion; and the banns of Matrimony published; and Briefs, Citations and Excommunications read. And nothing shall be proclaimed or published in the Church, during the time of Divine Service, but by the Minister: Nor by him anything, but what is prescribed in the Rules of this Book, or enjoined by the King, or by the Ordinary of the place.

¶ Then shall follow the Sermon, or one of the Homilies already set forth, or hereafter to be set forth by Authority.

¶ Then shall the Priest return to the Lord's Table, and begin the Offertory, saying one or more of these Sentences following, as he thinketh most convenient in his discretion.

The Offertory. After the Offertory, the First Book contains these directions, which have since been omitted:—

Where there be Clerks, they shall sing one or many of the sentences above written, according to the length and shortness of the time that the people be offering.

In the mean time, whiles the Clerks do sing the offertory, so many as are disposed shall offer to the poor men's box every one according to his ability and charitable mind. And at the offering days appointed, every man and woman shall pay to the Curate the due and accustomed offerings.

Then so many as shall be partakers of the holy communion shall tarry still in the quire, or in some convenient place nigh the quire, the men on the one side, and the women on the other side. All other (that mind not to receive the said holy communion) shall depart out of the quire, except the Ministers and Clerks.

Then shall the Minister take so much bread and wine as shall suffice for the persons appointed to receive the holy communion, laying the bread upon the corporas, or else in the paten, or in some other comely thing prepared for that purpose: and putting the wine into the chalice, or else in some fair or convenient cup prepared for that use, (if the chalice will not serve,) putting thereto a little pure and clean water, and setting both the bread and wine upon the altar. Then the Priest shall say,

*The Lord be with you.*

Answer. *And with thy spirit.*

Priest. *Lift up your hearts.*

Answer. *We lift them up unto the Lord.*

Priest. *Let us give thanks to our Lord God.*

Answer. *It is meet and right so to do.*

The Priest. *It is very meet, right, and our bounden duty, that we should at all times and in all places give thanks to thee, O Lord, holy Father, almighty everlasting God.*

Then, according to the 1552 and the present edition, the Service is continued thus:—

1549.

1552.

SEALED BOOKS.

¶ Then shall the churchwardens, or some other by them appointed, gather the devotion of the people, and put the same into the poor men's box: and upon the offering days appoint-

¶ Whilst these sentences are in reading, the Deacons, Churchwardens, or other fit person appointed for that purpose, shall receive the alms for the poor, and other devotions of the peo-



1549.

1552.  
ed, every man and woman shall pay to the Curate the due and accustomed offerings; after which done, the Priest shall say.

SEALED BOOKS.

ple, in a decent basin, to be provided by the Parish for that purpose; and reverently bring it to the Priest, who shall humbly present and place it upon the holy Table.

¶ And when there is a Communion, the Priest shall then place upon the Table so much Bread and Wine, as he shall think sufficient. After which done the Priest shall say,

Prayer for the Church Militant :—

1549.

1552.

SEALED BOOKS.

¶ When the Minister giveth warning for the celebration of the holy Communion, (which he shall alwayes do upon the Sunday or some holy-day immediately preceding) After the Sermon, or Homily ended, he shall read this exhortation following.

Prayer for the Church Militant.

The ordinary Exhortation :—

1549.

1552.

SEALED BOOKS.

Then shall follow this Exhortation at certain times when the Curate shall see the people negligent to come to the holy communion.

¶ Or in case he shall see the people negligent to come to the holy Communion, in stead of the former, he shall use this exhortation.

The Exhortation when the people are negligent :—

1549.

1552.

SEALED BOOKS.

¶ And sometime shall be said this also, at the discretion of the Curate, *Dearly beloved, forasmuch, &c.*

Then shall the Priest say this Exhortation.

¶ At the time of the Celebration of the Communion the Communicants being conveniently placed for the receiving of the holy Sacrament, the Priest shall say this exhortation.

First Exhortation to Communicants.

The first Exhortation to the communicants :—

1549.

1552.

SEALED BOOKS.

¶ Then shall the Priest say to them that come to receive the holy communion.

Second Exhortation.

The second Exhortation to the communicants :—

1549.

1552.

SEALED BOOKS.

¶ Then shall this general confession be made, in the name of all those that are minded to receive the holy communion, either by one of them, or else by one of the Ministers, or by the Priest himself, all kneeling humbly upon their knees.

¶ Then shall this general confession be made, in the name of all those that are minded to receive the holy Communion, by one of the Ministers, both he and all the people kneeling humbly upon their knees, and saying.

The General Confession.

The General Confession :—

1549.

1552.

SEALED BOOKS.

¶ Then shall the Priest or the Bishop (being present) stand up, and turning himself to the people, say thus.

¶ Then shall the Priest (or the Bishop being present) stand up, and turning himself to the people, pronounce this absolution.

Absolution.

The Absolution.

The Sentences.

The "Sursum Corda."

The Eucharistia; but the rubric before this, found in the present edition, is absent from that of 1552.

Here again the Services become similar, the Prefaces and the rubrics thereto being substantially the same in all the editions. Then in the First Book follow the parts found in the later editions before the Prefaces, viz. the Prayer for the Church Militant, *which includes the Prayer of Consecration*, the Confession, &c.

Here once more the Services become similar, the collect, "We do not presume," &c., with its rubric being substantially the same in all. Then the various editions proceed:—

1549.

¶ Then shall the Priest first receive the communion in both kinds himself, and next deliver it to other Ministers, if any be there present, (that they may be ready to help the chief minister,) and after to the people.

¶ And when he delivereth the sacrament of the body of Christ, he shall say to every one these words:

*The body of our Lord Jesus Christ, which was given for thee, preserve thy body and soul unto everlasting life.*

And the Minister delivering the sacrament of the blood, and giving every one to drink once, and no more, shall say,

*The blood of our Lord Jesus Christ, which was shed for thee, preserve thy body and soul unto everlasting life.*

If there be a Deacon or other Priest, then shall he follow with the chalice; and as the Priest ministereth the sacrament of the body, so shall he (for more expedition) minister the sacrament of the blood, in form before written.

In the communion time the Clerks shall sing,

ii. *O Lamb of God, that takest away the sins of the world; Have mercy upon us.*

*O Lamb of God, that takest away the sins of the world; Grant us thy peace.*

Beginning so soon as the Priest doth receive the holy communion, and when the communion is ended, then shall the Clerks sing the post-communion. (a)

Sentences.

"Sursum  
Corda,"  
Eucharistia.

Prefaces.

Post-commu-  
nion.

(a) Various sentences of Scripture so-called, of which one was to be said or sung every day.

Then the Priest shall give thanks to God, in the name of all them that have communicated, turning him first to the people, and saying,

*The Lord be with you, &c.*

1549.

1552.

Then the Priest, standing up, shall say as followeth.

SEALED BOOKS.

¶ When the Priest, standing before the Table, hath so ordered the Bread and Wine, that he may with the more readiness and decency break the Bread before the people, and take the Cup into his hands, he shall say the Prayer of Consecration, as followeth.

### The Prayer of Consecration :—

1549.

1552.

SEALED BOOKS.

¶ Then shall the Minister first receive the communion in both kinds himself, and next deliver it to other Ministers, if any be there present, (that they may help the chief Minister,) and after to the people in their hands kneeling. And when he delivereth the bread, he shall say,

*Take and eat this, in remembrance that Christ died for thee, and feed on him in thy heart by faith with thanksgiving.*

¶ And the Minister that delivereth the cup shall say,

¶ Then shall the Minister first receive the Communion in both kinds himself, and then proceed to deliver the same to the Bishops, Priests, and Deacons in like manner (if any be present) and after that to the people also in order, into their hands, all meekly kneeling. And when he delivereth the bread to any one, he shall say,

*The body of our Lord Jesus Christ, which was given for thee, preserve thy body and soul unto everlasting life. Take and*



1549.

*Drink this in remembrance that Christ's blood was shed for thee, and be thankful.*

¶ Then shall the Priest say the Lord's Prayer, the people repeating after him every petition.

1552.

SEALED BOOKS.

*eat this in remembrance that Christ died for thee, and feed on him in thy heart by faith with thanksgiving.*

¶ And the Minister that delivereth the cup to any one, shall say,

*The blood of our Lord Jesus Christ, which was shed for thee, preserve thy body and soul unto everlasting life. Drink this in remembrance that Christ's blood was shed for thee, and be thankful.*

¶ If the consecrated bread or wine be all spent before all have communicated ; the Priest is to consecrate more according to the form before prescribed : Beginning at [*Our Saviour Christ in the same night, &c.*] for the blessing of the bread ; and at [*Likewise after Supper, &c.*] for the blessing of the cup.

¶ When all have communicated, the Minister shall return to the Lords Table, and reverently place upon it what remaineth of the consecrated Elements, covering the same with a fair linen cloth.

¶ Then shall the

1549.

1552.

SEALED BOOKS.

Priest say the Lord's Prayer, the people repeating after him every petition.

The Lord's Prayer.

The First Thanksgiving.

The Second Thanksgiving.

The "Gloria in Excelsis."

The Blessing.

1549.

1552.

SEALED BOOKS.

Then the Priest, turning him to the people, shall let them depart with this blessing,

*The peace of God, &c.*

Then the people shal answer,

*Amen.*

Where there are no Clerks, there the Priest shall say all things appointed here for them to sing.

When the holy communion is celebrate on the work-day, or in private houses, then may be omitted the Gloria in Excelsis, the Creed, the Homily, and the Exhortation, beginning,

*Dearly beloved, &c.*

Then the Priest, or the Bishop, if he be present, shall let them depart with this blessing.

¶ Then the Priest (or Bishop if he be present) shall let them depart with this blessing.

Concluding  
rubrics.

The collects are the same in all the editions, and are supplemented in the First Book by two prayers, "for Rain" and "for Fair Weather."

Lastly come a series of rubrics and rubrical directions relating

to various matters in connection with the Holy Communion. In the First Book these are as follows :—

Provisions of  
First Book :—

¶ Upon Wednesdays and Fridays the English Litany shall be said or sung in all places, after such form as is appointed by the king's majesty's injunctions; or as is or shall be otherwise appointed by his highness. And though there be none to communicate with the Priest, yet these days (after the Litany ended) the Priest shall put upon him a plain albe or surplice, with a cope, and say all things at the altar, (appointed to be said at the celebration of the Lord's supper,) until after the offertory: and then shall add one or two of the Collects aforewritten, as occasion shall serve, by his discretion. And then, turning him to the people, shall let them depart with the accustomed blessing.

When the  
Litany to be  
used.

Vestments.

And the same order shall be used all other days, whensoever the people be customably assembled to pray in the church, and none disposed to communicate with the Priest.

Likewise in chapels annexed, and all other places, there shall be no celebration of the Lord's supper, except there be some to communicate with the Priest. And in such chapels annexed, where the people hath not been accustomed to pay any holy bread, there they must either make some charitable provision for the bearing of the charges of the communion, or else (for receiving of the same) resort to their parish church.

For avoiding of all matters and occasion of dissension, it is meet that the bread prepared for the communion be made through all this realm after one sort and fashion; that is to say, unleavened, and round, as it was afore, but without all manner of print, and something more larger and thicker than it was, so that it may be aptly divided in divers pieces; and every one shall be divided in two pieces at the least, or more, by the discretion of the Minister, and so distributed. And men must not think less to be received in part than in the whole, but in each of them the whole body of our Saviour Jesu Christ.

Bread to be un-  
leavened, &c.

And forsomuch as the Pastors and Curates within this realm shall continually find at their costs and charges in their cures, sufficient bread and wine for the holy communion, (as oft as their parishioners shall be disposed for their spiritual comfort to receive the same,) it is therefore ordered, that in recompense of such costs and charges the parishioners of every parish shall offer every Sunday, at the time of the offertory, the just value and price of the holy loaf, (with all such money and other things as were wont to be offered with the same,) to the use of their Pastors and Curates, and that in such order and course as they were wont to find and pay the said holy loaf.

Offerings at the  
Holy Commu-  
nion.

Also, that the receiving of the sacrament of the blessed body and blood of Christ may be most agreeable to the institution thereof,

Holy Commu-  
nion in Cath-  
edrals.

and to the usage of the primitive church; in all cathedral and collegiate churches there shall always some communicate with the Priest that ministereth. And that the same may be also observed every where abroad in the country, some one at the least of that house in every parish, to whom by course, after the ordinance herein made, it appertaineth to offer for the charges of the communion, or some other whom they shall provide to offer for them, shall receive the holy communion with the Priest: the which may be the better done, for that they know before when their course cometh, and may therefore dispose themselves to the worthy receiving of the sacrament. And with him or them who doth so offer the charges of the communion, all other who be then godly disposed thereunto, shall likewise receive the communion. And by this means the Minister, having always some to communicate with him, may accordingly solemnize so high and holy mysteries with all the suffrages and due order appointed for the same. And the Priest on the week day shall forbear to celebrate the communion, except he have some that will communicate with him.

All persons to communicate.

Furthermore, every man and woman to be bound to hear and be at the divine service, in the parish church where they be resident, and there with devout prayer, or godly silence and meditation, to occupy themselves; there to pay their duties, to communicate once in the year at the least, and there to receive and take all other sacraments and rites in this book appointed. And whosoever willingly, upon no just cause, doth absent themselves, or doth ungodly in the parish church occupy themselves; upon proof thereof, by the ecclesiastical laws of the realm, to be excommunicate, or suffer other punishment, as shall to the ecclesiastical judge (according to his discretion) seem convenient.

How the Sacrament to be administered.

And although it be read in ancient writers that the people many years past received at the priest's hands the sacrament of the body of Christ in their own hands, and no commandment of Christ to the contrary; yet forasmuch as they many times conveyed the same secretly away, kept it with them, and diversely abused it to superstition and wickedness: lest any such thing hereafter should be attempted, and that an uniformity might be used throughout the whole realm, it is thought convenient the people commonly receive the sacrament of Christ's body in their mouths, at the Priest's hand.

Directions of the Second Book.

In the Second Book these directions are in the following language, being, it will be noticed, substantially the same as those inserted in the present Book:—

¶ Upon the holy days, if there be no communion, shall be said all that is appointed at the communion, until the end of the Homily,



concluding with the general prayer for the whole state of Christ's church militant here in earth; and one or more of these Collects before rehearsed, as occasion shall serve.

¶ And there shall be no celebration of the Lord's Supper, except there be a good number to communicate with the Priest, according to his discretion.

¶ And if there be not above twenty persons in the parish of discretion to receive the communion; yet there shall be no communion, except four, or three at the least, communicate with the Priest. And in cathedral and collegiate churches, where be many Priests and Deacons, they shall all receive the communion with the Minister every Sunday at the least, except they have a reasonable cause to the contrary.

Number of communicants necessary.

Cathedrals, &c.

¶ And to take away the superstition which any person hath, or might have, in the bread and wine, it shall suffice that the bread be such as is usual to be eaten at the table with other meats, but the best and purest wheat bread that conveniently may be gotten. And if any of the bread or wine remain, the Curate shall have it to his own use.

Kind of bread.

¶ The bread and wine for the Communion shall be provided by the Curate and the churchwardens, at the charges of the parish; and the parish shall be discharged of such sums of money, or other duties, which hitherto they have paid for the same, by order of their houses every Sunday.

Who to provide the bread and wine.

¶ And note, that every parishioner shall communicate at the least three times in the year; of which Easter to be one: and shall also receive the sacraments, and other rites, according to the order in this book appointed. And yearly, at Easter, every parishioner shall reckon with his Parson, Vicar, or Curate, or his or their deputy or deputies, and pay to them or him all ecclesiastical duties accustomed due, then and at that time to be paid.

All persons to communicate.

## SECTION IV.—*Other Rites and Sacraments.*

### FIRST.—BAPTISM.

**I**N the 25th Article Baptism is described as one of the “two Sacraments ordained of Christ our Lord.” The 27th Article says that “the baptism of young children is any wise to be retained in the Church as most agreeable with the institution of Christ.”

Baptism, description of.

The rite may be performed by a clergyman, either publicly

Public.

or privately. If in the former manner it must be done within a church and at the font. "According to a former constitution, (a) too much neglected in many places, we appoint that there shall be a font of stone in every church and chapel where baptism is to be ministered, the same to be set in the ancient usual places, in which only font the minister shall baptize publicly." (b)

Every one entitled.

Every child is entitled to Baptism. "No minister shall refuse or delay to christen any child according to the form of the Book of Common Prayer, that is brought to the church to him upon Sundays or Holydays to be christened, or to bury any corpse that is brought to the church or churchyard, convenient warning being given him thereof before in such manner and form as is prescribed in the said Book of Common Prayer. And if he shall refuse to christen the one or bury the other (except the party deceased were denounced excommunicated majori excommunicatione, for some grievous and notorious crime, and no man able to testify of his repentance), he shall be suspended by the bishop of the diocese from his ministry by the space of three months." (bb)

Canon 29, as to sponsors.

As to the sponsors, the 29th Canon lays down that "No parent shall be urged to be present, nor be admitted to answer as Godfather for his own Child; nor any Godfather or Godmother shall be suffered to make any other answer or speech, than by the Book of Common Prayer is prescribed in that behalf: neither shall any person be admitted Godfather or Godmother to any Child at Christening or Confirmation, before the said person so undertaking hath received the holy Communion."

Various services for Baptism.

There are in the present Book of Common Prayer three services relating to Baptism, viz. the Publick Baptism of Infants,

(a) One of the Canons of 1571, viz. "Curabunt [*Æditui*] ut in singulis ecclesiis sit sacer fons non pelvis in quo baptismus ministretur usque ut deceter et munde conservetur."

(b) Canon 81.

(bb) Canon 68.

the Private Baptism of Infants, and the Baptism of such as are of riper years. The last is wanting in the two earlier Books.

### I. *Publick Baptism of Infants.*

1549.

*Of the Administration of Public Baptism to be used in the Church.*

1552.

*The Ministration of Baptism to be used in the Church.*

SEALED BOOKS.

*The Ministration of Publick Baptism of Infants to be used in the Church.*

Publick Baptism of Infants.

It appeareth by ancient writers, that the sacrament of Baptism in the old time was not commonly ministered but at two times in the year, at Easter and Whitsuntide; at which times it was openly ministered in the presence of all the congregation: which custom, (now being grown out of use,) although it cannot for many considerations be well restored again, yet it is thought good to follow the same as near as conveniently may be. Wherefore the people are to be admonished, that it is most convenient that Baptism should not be ministered but upon Sundays and other holydays, when the most number of people may come together: as well for that the congregation there present may testify the receiving of them that be newly baptized into the number of Christ's church; as also because in the baptism of infants every man present may be put in remembrance of his own profession made to God in his baptism. For which cause also it is expedient that baptism be ministered in the English tongue. Nevertheless (if necessity so require) [children may at all times be baptized at home 1552] children ought at all times to be baptized either at the church or else at home.

¶ The people are to be admonished, that it is most convenient that Baptism should not be administered but upon Sundays and other holy-dayes, when the most number of people come together: as well for that the Congregation there present may testify the receiving of them that be newly baptized into the number of Christs Church; as also because in the Baptism of Infants, every man present may be put in remembrance of his own profession made to God in his Baptism. For which cause also it is expedient that Baptism be ministered in the vulgar tongue. Nevertheless (if necessity so require) children may be baptized upon any other day.

¶ And note, that there shall be for

1549.

When there are children to be baptized upon the Sunday or holyday, the parents shall give knowledge overnight, or in the morning afore the beginning of Matins, to the Curate. And then the godfathers, godmothers, and people, with the children, must be ready at the church door, either immediately afore the last Canticle at Matins, or else immediately afore the last Canticle at Evensong, as the Curate by his discretion shall appoint. And then, standing there, the Priest shall ask whether the children be baptized or no. If they answer, No, then shall the Priest say thus.

1552.

When there are children to be baptized upon the Sunday or holyday, the parents shall give knowledge overnight, or in the morning afore the beginning of Morning Prayer, to the Curate. And then the godfathers, godmothers, and people, with the children, must be ready at the font, either immediately after the last lesson at Morning Prayer, or else immediately after the last Lesson at Evening Prayer, as the Curate by his discretion shall appoint. And then, standing there, the Priest shall ask whether the children be baptized or no. If they answer, No, then shall the Priest say thus.

SEALED BOOKS.

every male child to be baptized two Godfathers and one Godmother: and for every female, one Godfather and two Godmothers.

¶ When there are children to be baptized, the Parents shall give knowledge thereof over night, or in the morning before the beginning of morning Prayer to the Curate. And then the Godfathers and Godmothers, and the People, with the Children must be ready at the Font, either immediately after the last Lesson at Morning Prayer, or else immediately after the last lesson at Evening Prayer, as the Curate by his discretion shall appoint. And the Priest coming to the Font (which is then to be filled with pure water) and standing there shall say, Hath this child been already baptized or no. ¶ If they answer, No, then shall the Priest proceed as followeth.

Exhortation.

After these rubrics come the Exhortation, which is the same in all three editions; then the Prayer, which is the same in the 1552 and the present Book, but with considerable verbal altera-



tions in the First Book; then in the First Book the Service proceeds thus :—

¶ Here shall the Priest ask what shall be the name of the child; and when the godfathers and godmothers have told the name, then he shall make a cross upon the child's forehead and breast, saying,

¶ N. *Receive the sign of the holy cross, both in thy forehead and in thy breast, in token that thou shalt not be ashamed to confess thy faith in Christ crucified, and manfully to fight under his banner against sin, the world, and the devil, and to continue his faithful soldier and servant unto thy life's end. Amen.*

And this he shall do and say to as many children as be present to be baptized, one after another.

The prayer following is the same in all three editions. Then Exorcism. in the First Book only there is the Exorcism, thus :—

Then let the Priest, looking upon the children, say,

*I command thee, unclean spirit, in the name of the Father, of the Son, and of the Holy Ghost, that thou come out, and depart from these infants, whom our Lord Jesus Christ hath vouchsafed to call to his holy baptism, to be made members of his body, and of his holy congregation. Therefore, thou cursed spirit, remember thy sentence, remember thy judgment, remember the day to be at hand wherein thou shalt burn in fire everlasting, prepared for thee and thy angels. And presume not hereafter to exercise any tyranny toward these infants, whom Christ hath bought with his precious blood, and by this his holy baptism calleth to be of his flock.*

Then shall the Priest say,

*The Lord be with you.*

The People. *And with thy spirit.*

The Gospel following and the Second Exhortation are the same in each book. Following the Exhortation in the First Prayer Book is the rubric :—

Here the Ministers, with the godfathers, godmothers, and people present, shall say,

*Our Father,*

And then shall say openly,

*I believe in God, &c.*

The next Prayer is almost identical in the three Prayer Books. The First Prayer Book then proceeds :—

Then let the Priest take one of the children by the right hand, the other being brought after him. And coming into the church towards the font, say,

*The Lord vouchsafe to receive you into his holy household, and to keep and govern you alway in the same, that you may have everlasting life. Amen.*

Questions put  
to the sponsors.

The Address to the sponsors, and the Questions put to the sponsors on behalf of the child, are substantially the same in all editions; but the Supplications after the Questions which are contained in the 1552 and the present Book are wanting in the First Book.

The Service then proceeds:—

1549.

¶ Then the Priest shall take the child in his hands, and ask the name; and naming the child, shall dip it in the water thrice. First, dipping the right side; second, the left side; the third time dipping the face toward the font: so it be discreetly and warily done; saying,

1552.

¶ Then the Priest shall take the child in his hands, and ask the name; and naming the child, shall dip it in the water, so it be discreetly and warily done; saying,

SEALED BOOKS.

¶ Then the Priest shall take the child into his hands, and shall say to the Godfathers and Godmothers,

*Name this child.*

And then naming it after them (if they shall certify him that the child may well endure it) he shall dip it in the water discreetly and warily, saying,

¶ N. *I baptize thee in the name of the Father, and of the Son, and of the Holy Ghost. Amen.*

¶ And if the child be weak, it shall suffice to pour water upon it, saying the foresaid words.

¶ But if they certify, that the child is weak, it shall suffice to pour water upon it, saying the foresaid words.

Then the godfathers and godmothers shall take and lay their hands upon the child;

1549.

1552.

SEALED BOOKS.

and the Minister shall put upon him his white vesture, commonly called the chrism, and say,

*Take this white vesture for a token of the innocence which, by God's grace, in this holy sacrament of baptism, is given unto thee; and for a sign whereby thou art admonished, so long as thou livest, to give thyself to innocency of living, that, after this transitory life, thou mayest be partaker of the life everlasting. Amen.*

Then the Priest shall anoint the infant upon the head, saying,

*Almighty God, the Father of our Lord Jesus Christ, who hath regenerate thee by water and the Holy Ghost, and hath given unto thee remission of all thy sins; He vouchsafe to anoint thee with the unction of his Holy Spirit, and bring thee to the inheritance of everlasting life. Amen.*

Then the Priest shall make a cross upon the child's forehead, saying.

¶ Then the Priest shall say.

The Admittance into the Church.

The Address to the Congregation.

## The Lord's Prayer.

## The Prayer for the infant.

1549.

When there are many to be baptized, this order of demanding, baptizing, putting on the chrism, and anointing, shall be used severally with every child; those that be first baptized departing from the font, and remaining in some convenient place within the church until all be baptized. At the last end, the Priest, calling the godfathers and godmothers together, shall say this Exhortation following:

## The Exhortation.

1549.

¶ The Minister shall command that the chrisms be brought to the church, and delivered to the Priests after the accustomed manner, at the purification of the mother of every child; and that the children be brought to the Bishop to be confirmed of him, so soon as they can say in their vulgar tongue the Articles of the Faith, the Lord's Prayer, and the Ten

1552.

¶ At the last end, the Priest, calling the godfathers and godmothers together, shall say this short Exhortation following.

SEALED BOOKS.

¶ Then all standing up, the Priest shall say to the Godfathers and Godmothers this exhortation following.

1552.

¶ The minister shall command that the children be brought to the Bishop to be confirmed of him, so soon as they can say in their vulgar tongue the Articles of the Faith, the Lord's Prayer, and the Ten Commandments; and be further instructed in the Catechism set forth for that purpose, accordingly as it is there expressed.

SEALED BOOKS.

¶ Then shall he adde and say,

*Ye are to take care that this child be brought to the Bishop to be confirmed by him, so soon as he can say the Creed, the Lords Prayer, and the ten Commandments in the vulgar tongue, and be further instructed in the Church-Catechism set forth for that purpose.*

It is certain by Gods word, that chi



1549.

Commandments; and be further instructed in the Catechism, set forth for that purpose, accordingly as it is there expressed.

And so let the congregation depart in the name of the Lord.

¶ Note, that if the number of children to be baptized, and multitude of people present be so great that they cannot conveniently stand at the church door, let them stand within the church, in some convenient place, nigh unto the church door; and there all things be said and done, appointed to be said and done, at the church door.

1552.

SEALED BOOKS.

dren which are baptized, dying before they commit actual sin, are undoubtedly saved.

To take away all scruple concerning the use of the signe of the Cross in Baptism; the true Explanation thereof, and the just reasons for the retaining of it may be seen in the xxxth Canon, first published in the year MDCIV.

The Baptismal rubric contains full directions as to the performance of the rite. The chief point calling for notice is the direction to "sign the child with the sign of the Cross." This is to be done *after* the formula of naming has been said and the water used, and it is no essential portion of the rite. Its import is thus explained in the 30th Canon: "First, the Church of England, since the abolishing of Popery, hath ever held and taught, and so doth hold and teach still, that the sign of the Cross used in Baptism is no part of the substance of that Sacrament: for when the Minister, dipping the infant in water or laying water upon the face of it (as the manner also is) hath pronounced these words, 'I baptize thee in the name of the Father, and of the Son, and of the Holy Ghost,' the infant is fully and perfectly baptized. So as the sign of the Cross being

Baptismal  
rubric.

30th Canon,  
explaining sign  
of cross.

afterwards used, doth neither add anything to the virtue and perfection of Baptism, nor being omitted doth detract any thing from the effect and substance of it.

“Secondly : it is apparent in the Communion Book that the infant baptized is, by virtue of Baptism, before it be signed with the sign of the Cross, received into the congregation of Christ’s flock, as a perfect member thereof, and not by any power ascribed unto the sign of the Cross. So that for the very remembrance of the Cross, which is very precious to all them that rightly believe in Jesus Christ, and in the other respects mentioned, the Church of England hath retained still the Sign of it in Baptism; following therein the primitive and apostolical Churches, and accounting it a lawful outward ceremony and honourable badge, whereby the infant is dedicated to the service of Him that died upon the Cross, as by the words used in the Book of Common Prayer it may appear.

“Lastly: the use of the sign of the Cross in Baptism being thus purged from all Popish superstition and error, and reduced in the Church of England to the primary institution of it, upon those true rules of doctrine concerning things indifferent, which are consonant to the Word of God and the judgment of all the ancient fathers, we hold it the part of every private man both minister and other, reverently to retain the true use of it prescribed by public authority: considering that things of themselves indifferent do in some sort alter their natures, when they are either commanded or forbidden by a lawful magistrate; and may not be omitted at every man’s pleasure, contrary to the law, when they be commanded, nor used when they are prohibited.”

## II. *Private Baptism of Infants.*

Private Baptism allowable only in case of necessity.

It is only under circumstances of “great cause and necessity (Baptismal rubric), that parents may “procure their children be baptized at home in their houses.” In respect of this, Can

59 enacts, "If any minister, being duly, without any manner of collusion, informed of the weakness and danger of death of any infant unbaptized in his parish, and thereupon desired to go or come to the place where the said infant remaineth, to baptize the same, shall either wilfully refuse so to do, or of purpose, or of gross negligence, shall so defer the time, as, when he might conveniently have resorted to the place, and have baptized the said infant, it dieth through such his default unbaptized, the said minister shall be suspended for three months; and before his restitution, shall acknowledge his fault, and promise before his Ordinary that he will not wittingly incur the like again. Provided that where there is a curate or a substitute, this constitution shall not extend to the parson or vicar himself, but to the curate or substitute present."

As to the necessity the clergyman is to be the judge, and is only required to exercise due care and discretion. He is therefore justified in refusing to baptize a child brought to his house for that purpose unless there are manifestly urgent reasons for immediate baptism. (c)

The clergyman to judge of the necessity.

The following directions are contained in the various editions of the Prayer Book for carrying out the office for Private Baptism:—

1549.

1552.

SEALED BOOKS.

*Of them that be baptized in Private Houses, in time of necessity.*

*The Ministration of Private Baptism of Children in Houses.*

¶ The Pastors and Curates shall oft admonish the people, that they defer not the baptism of infants any longer than the Sunday or other holyday next after the child be born, unless upon a great and reasonable cause, declared to the Curate, and by him approved.

¶ The Curates of every Parish shall often admonish the people, that they deferre not the Baptism of their children longer than the first or second Sunday next after their birth,

And also they shall warn them, that without great cause and necessity they baptize our children at home in their houses. And

1549.

when great need shall compel them so to do, that then they minister it on this fashion.

¶ First, let them that be present call upon God for his grace, and say the Lord's Prayer, if the time will suffer. And then one of them shall name the child, and dip him in the water, or pour water upon him, saying these words :

1552.

SEALED BOOKS.

or other holy-day falling between, unless upon a great and reasonable cause, to be approved by the Curate.

¶ And also they shall warn them, that without like great cause and necessity they procure not their children to be baptized at home in their houses. But when need shall compel them so to do, then Baptism shall be administered on this fashion.

¶ First let the Minister of the Parish (or in his absence, any other lawful Minister that can be procured) with them that are present call upon God, and say the Lord's Prayer, and so many of the Collects appointed to be said before in the Form of Publick Baptism, as the time and present exigence will suffer. And then, the child being named by some one that is present, the Minister shall pour water upon it, saying these words ;

¶ N. *I baptize thee in the name of the Father, and of the Son, and of the Holy Ghost. Amen.*

¶ Then all kneeling down, the Minister shall give thanks unto God, and say.



This is followed in the present edition by the Thanksgiving.  
Then : —

1549.

And let them not doubt, but that the child so baptized is lawfully and sufficiently baptized, and ought not to be baptized again in the church. But yet nevertheless, if the child, which is after this sort baptized, do afterward live, it is expedient that he be brought into the church, to the intent the Priest may examine and try whether the child be lawfully baptized or no. And if those that bring any child to the church do answer that he is already baptized, then shall the Priest examine them further.

¶ *By whom the child was baptized?*

*Who was present when the child was baptized?*

*Whether they called upon God for grace and succour in that necessity?*

*With what thing, or what matter, they did baptize the child?*

*With what words the child was baptized?*

*Whether they think the child to be lawfully and perfectly baptized?*

1552.

SEALED BOOKS.

¶ And let them not doubt, but that the child so baptized is lawfully and sufficiently baptized, and ought not to be baptized again. Yet nevertheless, if the child which is after this sort Baptized, do afterward live, it is expedient that it be brought into the Church, to the intent that if the Minister of the same Parish did himself Baptize that child, the Congregation may be certified of the true form of Baptism, by him privately before used: In which case he shall say thus,

SEALED BOOKS.

*I certify you, that according to the due and prescribed order of the Church, at such a time, and at such a place, before divers witnesses I baptized this child.*

¶ But if the child were baptized by any other lawful Minister; then the Minister of the Parish where the child was born or christened, shall examine and try whether the child be lawfully baptized, or no. In which case, if those that bring any child to the Church, do answer that the same child is already baptized, then shall the Minister examine them further, saying,

*By whom was this child baptized?*

*Who was present when this child was baptized?*

*Because some things essential to this sacrament may happen to be omitted through fear or haste, in such times of extremity; therefore I demand further of you,*

*With what matter was this child baptized?*

*With what words was this child baptized?*

The Service is then continued in a manner corresponding to that which each Book prescribes for the public baptism of infants, till the following rubric :—

1549.

¶ But if they which bring the infants to the church do make an uncertain answer to the Priest's questions, and say that they cannot tell what they thought, did, or said, in that great fear and trouble of mind ; (as oftentimes it chanceth ;) then let the Priest baptize him in form above written concerning Public Baptism, saving that at the dipping of the child in the font, he shall use this form of words.

1552.

SEALED BOOKS.

¶ But if they which bring the infant to the Church do make such uncertain answers to the Priests questions, as that it cannot appear that the child was baptized with water, In the Name of the Father, and of the Son, and of the Holy Ghost (which are essential parts of Baptism) then let the Priest baptize it in the form before appointed for Publick Baptism of infants : saving that at the dipping of the child in the Font, he shall use this form of words.

The person is then baptized, and here the Service ends in the present and the 1552 Books, but in the first edition there is the following rubric :—

The water in the font shall be changed every month once at the least ; and afore any child be baptized in the water so changed, the Priest shall say at the font these prayers following.

After which are added a collection of short Collects and Prayers.

### III. *The Baptism of such as are of riper years.*

This office was added in 1662. It is directed to be performed by the Priest, and therefore, deacons have no authority to conduct it.

# WHAT IS LEGAL BAPTISM.

Hitherto, reference has been made only to Baptism by duly ordained ministers of the Church of England : the next question is as to the effect of an analogous ceremony when performed by any other person.

Effect of baptism performed by any other than a minister of the Church of England.

In several recent cases the question has received a full and exhaustive consideration. One of these is *Kemp v. Wickes*. (d) Here Sir John Nicholl laid down that “from the earliest times, in the use of water with the invocation of the name of the Father, of the Son, and of the Holy Ghost, was held to be the essence of Baptism ; that Baptism so administered even by a layman or a woman was valid ; and that a person who had been so baptized, was not to be baptized again.”

*Kemp v. Wickes*.

Baptism performed by a layman is sufficient.

These propositions he proved by a very careful examination of the authorities. He showed that according to the practice both prior and subsequent to the Reformation, all that is absolutely necessary is *de facto* baptism, and that though the Church has always discountenanced lay baptism, yet that this form is sufficient. He then said : “So the matter still remains, and after tracing the law through the several stages of its history, it appears impossible to entertain a reasonable doubt that the Church did at all times (whatever might have been the opinions of particular individuals upon this point, as there will be differences of opinions among individuals upon all points),—that the Church itself did at all times hold Baptism by water in the name of the Father and of the Son and of the Holy Ghost, to be valid Baptism, though not administered by a priest who had been episcopally ordained—or rather, to state it more generally, though administered by a layman or any other person. If that be so, if that is the construction of Baptism by the Church of England, then the refusal of a burial to a person unbaptized, that term simply being used, cannot mean that it should be

(d) 3 Phil. 264, 276, 292-4.

refused to persons who have not been baptized by a lawful minister in the form of the Book of Common Prayer, since the Church itself holds persons not to be unbaptized (because it holds them to be validly baptized) who have been baptized with water and the invocation by any other person and in any other form. . . .

“ But the matter was placed by the learned counsel who last spoke in a much more favourable shape. The Court is not to decide whether this be a valid baptism so as to entitle the person to become a member of the English Church or a minister of the Established Church, but whether the person so baptized is excluded from burial by the Established Church; it is a question of exclusion and of disability. Now the Church of England does not refuse the office of burial to all persons who are not conforming members of this Church, there is no law to be found to that effect. Papists, who ever since the Reformation have been considered as much more widely separated from the Reformed Church than Protestant Dissenters, are not only permitted to be buried by our Church, but are required so to be. Popish recusants are required to be buried in the church or church-yard, or a penalty is incurred by their representatives; and this not by putting the body into the ground without the ceremony being performed, but the minister is to read the service; our Church knowing no such indecency as putting the body into the consecrated ground without the service being at the same time performed.”

*Escott v. Mastin.*

*Escott v. Mastin* (e) is exactly to the same effect. It is more important than the case last cited, not only in being a decision later in date and of the Privy Council, but in containing a fuller and more elaborate examination of the existing law upon this matter. Here the plaintiff (on the appeal), the Rev. T. P. Escott, had refused to bury a corpse, upon the ground that as the deceased

Baptism by a  
dissenting  
Minister.

(e) 4 Moore, P. C. C. 692, on appeal affirming the decision of the Court below, 2 Curt. 692.



had been *de facto* baptized by a Wesleyan minister who was not in holy orders, the rite or form of Baptism so performed was to all intents and purposes null and void, and consequently the deceased had died "unbaptized." The Dean of the Arches Court held the refusal unjustifiable, and in accordance with the 68th canon sentenced Mr. Escott to three months' deprivation and to payment of costs.

From this decision Mr. Escott appealed to the Privy Council. Here the judgment was delivered by Lord Brougham, who examined the authorities very carefully and fully, and decided that the sentence appealed from must be affirmed in all its parts with costs.

The two cases here given must apparently have settled the law. They decided, to use Lord Brougham's words, that "any person other than one episcopally ordained may baptize, so that the ceremony will be effectual as baptismal, though the performing of it may be irregular and even censurable." This language would seem sufficiently wide to cover every possible case. However, in *Titchmarsh v. Chapman*, (*f*) where the baptism had been by an "Independent" minister, it was pleaded on behalf of the defendant, the Rev. W. Chapman, that such Baptism was schismatical and heretical, and such as not to entitle the corpse of the child to have the Burial Service read over it. As to this, Sir H. J. Fust said:—"It is now contended that this question, [*i. e.* the validity of Baptism by a heretic] is not concluded by what took place in *Mastin v. Escott*, and it is said that it was only decided in that case that an infant who had been baptized by a Wesleyan minister in the name of the Trinity was not unbaptized, and that the rubric which declares that the Burial Service shall not be read over persons who die unbaptized did not apply to such case. Certainly in *Mastin v. Escott* nothing did turn on the suggestion of heresy or schism; the defect in the

*Titchmarsh v. Chapman.*

Baptism by a heretic.

(*f*) 3 Curt. 840. See also the same case, 3 Notes of Cases 370, and 1 Rob. Eccl. 175.

baptism, as there alleged, was the want of holy orders in the person who had performed that ceremony. In the present case this question has been directly raised; it is distinctly averred that this baptism was and is heretical, having been performed by a person not qualified to administer the rite of baptism. The Court may here say that in *Mastin v. Escott*, both in this court and in the superior court, the question was stated to be confined to this point—whether baptism could be duly administered by a Wesleyan minister? Nothing turned on the question of heresy or schism. The case was so stated by the learned lord who delivered the judgment of the court above. The distinction does arise in the present case, and the question is directly raised whether or no baptism of this description, pleaded to be heretical and schismatical, is invalid baptism, so as to take this case out of that decision in *Mastin v. Escott*? Now, although it is perfectly true there has been no absolute decision on the point—for it has not as yet been distinctly raised, and courts of law never determine more than the question raised before them—yet undoubtedly the greater part of the argument in *Mastin v. Escott* turned on the question, whether schismatical or heretical baptism was or was not valid? It was part of the object of the party there cited to show that the baptism in that case was heretical and schismatical, and not simply lay baptism, and the arguments were founded principally on its being heretical and schismatical; and although, as I have said, it was not necessary in that case to decide whether schismatical and heretical baptism was or was not invalid, the arguments were principally directed to that point.”

#### SECOND.—CONFIRMATION.

In the first two Books this Service is entitled “Confirmation, wherein is contained a Catechism for Children.” It therefore contained the Catechism which, in the present edition, is printed separately from it. The introductory portion also differs considerably from that contained in the present Book, thus:—

1549.

1552.

To the end that Confirmation may be ministered to the more edifying of such as shall receive it, (according to *(ll)* St. Paul's doctrine, who teacheth that all things should be done in the church to the edification of the same,) it is thought good, that none hereafter shall be confirmed, but such as can say in their mother tongue the Articles of the Faith, the Lord's Prayer, and the Ten Commandments; and can also answer to such questions of this short Catechism, as the Bishop (or such as he shall appoint) shall by his discretion appose them in. And this order is most convenient to be observed for divers considerations.

¶ First, because that when children come to the years of discretion, and have learned what their godfathers and godmothers promised for them in baptism, they may then themselves, with their own mouth, and with their own consent, openly before the church, ratify *(mm)* and confess the same; and also promise, that by the grace of God they will evermore endeavour themselves faithfully to observe and keep such things as they by their own mouth and confession have assented unto.

¶ Secondly, forasmuch as confirmation is ministered to them that be baptized, that by imposition of hands and prayer they may receive strength and defence against all temptations to sin, and the assaults of the world and the devil; it is most meet to be ministered when children come to that age, that partly by the frailty of their own flesh, partly by the assaults of the world and the devil, they begin to be in danger to fall *(nn)* into sin.

¶ Thirdly, for that it is agreeable with the usage of the church in times past, whereby it was ordained, that confirmation should be ministered to them that were of perfect age, that they, being instructed in Christ's religion, should openly profess their own faith, and promise to be obedient unto the will of God.

¶ And that no man shall think that any detriment shall come to children by deferring of their confirmation, he shall know for truth, that it is certain by God's word that children, *(oo)* being baptized, (if they depart out of this life in their infancy,) are undoubtedly saved.

Then follows the Catechism, and after it the third only of the rubrics found at the end of the Catechism in the present Book. The others are wanting there; but two of them, the first and fifth, are added at the close of the order for Confirmation. The Catechism.

*(ll)* unto 1552.*(mm)* and confirm 1552.*(nn)* into sundry kinds of sin 1552.

*(oo)* being baptized, have all things necessary for their salvation, and be undoubtedly saved 1552.

Confirmation.

Then follows the order for confirmation. It is the same in all three editions, but with this difference: the first edition does not contain the prayer "Defend, O Lord, this child," &c.; but instead thereof the service thus proceeds:—

1549.

Minister. *Sign them (O Lord) and mark them to be thine for ever, by the virtue of thy holy cross and passion. Confirm and strength them with the inward unction of thy Holy Ghost mercifully unto everlasting life. Amen.*

Then the Bishop shall cross them in the forehead, and lay his hand upon their head, saying,

N. *I sign thee with the sign of the cross, and lay my hand upon thee, in the name of the Father, and of the Son, and of the Holy Ghost. Amen.*

And thus shall he do to every child, one after another. And when he hath laid his hand upon every child, then shall he say,

*The peace of the Lord abide with you.*

Answer. *And with thy spirit.*

1552.

### THIRD.—SOLEMNIZATION OF MATRIMONY.

1549.

¶ First the banns must be asked three several Sundays or holydays, in the service time, the people being present after the accustomed manner.

And if the persons that would be married dwell in divers parishes, the banns must be asked in both parishes; and the Curate of the one parish shall not solemnize matrimony betwixt them, without a certificate of the banns being thrice asked, from the Curate of the other parish.

At the day appointed for solemnization of matrimony, the persons to be married shall come into the body of the church with their friends and neighbours: and there the Priest shall thus say.

1552.

¶ First the banns must be asked three several Sundays or holydays, in the time of service, the people being present, after the accustomed manner.

SEALED BOOKS.

First the Banns of all that are to be married together, must be published in the Church three several Sundaies or Holydaies, in the time of Divine Service, immediately before the sentences for the Offertory; the Curate saying after the accustomed manner,

*I publish the Banns,*  
&c.

¶ And if the persons that are to be married, dwell in divers Parishes, the Banns must be asked in both Parishes; and



1549.

1552.

## SEALED BOOKS.

the Curate of the one Parish shall not solemnize Matrimony betwixt them, without a Certificate of the Banns being thrice asked, from the Curate of the other Parish.

¶ At the day and time appointed for solemnization of Matrimony, the persons to be married shall come into the body of the Church with their friends and neighbours: And there standing together, the man on the right hand, and the woman on the left, the Priest shall say.

Excepting verbal alterations, the subsequent portion of the Service is the same in all the Books. In the First Book, "the man shall give unto the woman a ring, *and other tokens of spousage as gold and silver*, laying the same upon the book. And the Priest," &c. ; and the sign of the cross is to be used in the blessing by the Priest. Also in the first two Books the concluding direction is, "The new-married persons (the same day of their marriage) must receive the holy Communion."

In connection with this Rite the provisions of the 62nd Canon must be borne in mind. "No Minister, upon pain of suspension *per triennium ipso facto*, shall celebrate Matrimony between any persons without a faculty or licence granted by some of the persons in these our Constitutions expressed, except the Banns of Matrimony have been first published three several Sundays or Holy-days, in the time of Divine Service, in the Parish Churches and Chapels where the said parties dwell, according

Necessity for a  
licence or banns.

to the Book of Common Prayer. Neither shall any Minister, upon the like pain, under any pretence whatsoever, join any persons so licenced in marriage at any unseasonable times, but only between the hours of 8 and 12 in the fore-noon, nor in any private place, but either in the said Churches or Chapels where one of them dwelleth, and likewise in time of Divine Service, nor when the Banns are thrice asked, and no licence in that respect necessary, before the parents or governors of the parties to be married, being under the age of 21 years, shall either personally or by sufficient testimony signify to them their consents given to the said marriage."

Time for performing the  
Serv. ce.

The expression, "at any unseasonable time," refers to the time of day, not of the year. In the present Ecclesiastical Law of the English Church there is no express prohibition in respect of particular periods of the year; but the Constitutions collected by Lyndwood contain such a prohibition: "*Solemnizatio non potest fieri a prima Dominica Adventus, usque ad Octavas Epiphaniæ exclusivè; et a Dominica LXX. usque ad primam Dominicam post pascha inclusivè; et a prima die Rogationum usque ad septimum diem Festi Pentecostes inclusivè, licet quoad vinculum his diebus contrahi possit.*"

#### FOURTH.—THE ORDER FOR THE VISITATION OF THE SICK.

All the editions contain the preliminary direction that the Priest on coming to the sick man's house is to say, "*Peace,*" &c.

In the First Prayer Book this order began with the Psalm 143, "*Domine exaudi,*" to be said by the Priest immediately upon entering the house. The Service then proceeds in the same manner in all the editions, with only verbal differences, till the rubric as to Confession, which varies considerably:—

1549.

¶ Here shall the sick person make a special confession, if he feel his conscience troubled with any weighty matter. After which confession the Priest shall absolve him after this form: and the same form of absolution shall be used in all private confessions.

1552.

¶ Here shall the sick person make a special confession, if he feel his conscience troubled with any weighty matter. After which confession the Priest shall absolve him after this sort.

SEALED BOOKS.

¶ Here shall the sick person be moved to make a special confession of his sins, if he feel his conscience troubled with any weighty matter. After which confession, the Priest shall absolve him (if he humbly and heartily desire it) after this sort.

In the First and Second Books the Service usually ends with the prayer, "The Almighty Lord which," &c., all the rest being wanting. But in the First Book there is this special addition:—

¶ If the sick person desire to be anointed, then shall the Priest anoint him upon the forehead or breast only, making the sign of the cross, saying thus,

*As with this visible oil thy body outwardly is anointed, so our heavenly Father, Almighty God, grant of his infinite goodness that thy soul inwardly may be anointed with the Holy Ghost, who is the spirit of all strength, comfort, relief, and gladness. And vouchsafe for his great mercy (if it be his blessed will) to restore unto thee thy bodily health and strength, to serve him; and send thee release of all thy pains, troubles, and diseases, both in body and mind. And howsoever his goodness (by his divine and unsearchable providence) shall dispose of thee; we, his unworthy ministers and servants, humbly beseech the eternal Majesty to do with thee according to the multitude of his innumerable mercies, and to pardon thee all thy sins and offences committed by all thy bodily senses, passions, and carnal affections; who also vouchsafe mercifully to grant unto thee ghostly strength, by his Holy Spirit, to withstand and overcome all temptations and assaults of thine adversary, that in no wise he prevail against thee; but that thou mayest have perfect victory and triumph against the devil, sin, and death; through Christ our Lord: who by his death hath overcome the prince of death; and with the Father and the Holy Ghost, evermore liveth and reigneth, God, world without end. Amen.*

This is followed by the 13th Psalm and the "Gloria Patri."

Duty of the  
Minister to  
visit the sick.

In respect of the Visitation of the Sick, the 67th Canon enjoins:—"When any person is dangerously sick in any parish, the Minister or Curate having knowledge thereof shall resort unto him or her (if the disease be not known, or probably suspected to be infectious) to instruct and comfort them in their distress according to the order of the Communion Book, if he be no Preacher, or if he be a Preacher, then as he shall think most needful and convenient. And when any is passing out of this life a bell shall be tolled, and the Minister shall not then slack to do his last duty. And after the party's death, if it so fall out, there shall be rung no more than one short peal, and one other before the burial, and one other after the burial."

#### FIFTH.—THE COMMUNION OF THE SICK.

The present order is much shorter than that found in the First Prayer Book, the difference, however, being occasioned as much by longer rubrics as by the lengthened form of the Service itself. The more convenient plan will be to give the Service *in extenso* as found in the First and Second Books, and comparison can then be made by the reader with the present form:—

1549.

1552.

Forasmuch as all mortal men be subject to many sudden perils, diseases, and sicknesses, and ever uncertain what time they shall depart out of this life; therefore, to the intent they may be always in a readiness to die, whensoever it shall please Almighty God to call them, the Curates shall diligently from time to time, but specially in the plague time, exhort their parishioners to the oft receiving (in the church) of the holy communion of the body and blood of our Saviour Christ; which (if they do) they shall have no cause, in their sudden visitation, to be unquieted for lack of the same. But if the sick person be not able to come to the church, and yet is desirous to receive the communion in his house, then he must give knowledge over night, or else early in the morning to the Curate, signifying also how many be appointed to communicate with him.



1549.

And if the same day there be a celebration of the holy communion in the church, then shall the Priest reserve (at the open communion) so much of the sacrament of the body and blood as shall serve the sick person, and so many as shall communicate with him, (if there be any.) And so soon as he conveniently may, after the open communion ended in the church, shall go and minister the same, first to those that are appointed to communicate with the sick, (if there be any,) and last of all to the sick person himself. But before the Curate distribute the holy communion, the appointed General Confession must be made in the name of the communicants, the Curate adding the Absolution, with the comfortable sentences of scripture following in the open communion. And after the communion ended, the Collect.

*Almighty and everliving God, we most heartily thank thee, &c.*

¶ But if the day be not appointed for the open communion in the church, then (upon convenient warning given) the Curate shall come and visit the sick person afore noon. And having a convenient place in the sick man's house, (where he may reverently celebrate,) with all things necessary for the same, and not being otherwise letted with the public service, or any other just impediment, he shall there celebrate the holy communion after such form and sort as hereafter is appointed.

1552.

And having a convenient place in the sick man's house, where the Curate may reverently minister, and a good number to receive the communion with the sick person, with all things necessary for the same, he shall there minister the holy communion.

1549.

1552.

The Celebration of the Holy  
Communion for the Sick.

*O praise the Lord, all ye nations; laud him, all ye people: for his merciful kindness is confirmed towards us, and the truth of the Lord endureth for ever.*

*Glory be to the Father, and to the Son, &c.*

*Lord, have mercy upon us.*

*Christ, have mercy upon us.*

*Lord, have mercy upon us.*

*Without any more repetition.*

*The Priest. The Lord be with you.*

*Answer. And with thy spirit.*

*Let us pray.*

*The Collect.*

*Almighty everliving God, Maker of mankind, which dost correct those whom thou dost love, and chastisest every one whom thou dost receive; We beseech thee to have mercy upon this thy servant visited with thy hand, and to grant that he may take his sickness patiently, and recover his bodily health (if it be thy gracious will;) and whensoever his soul shall depart from the body, it (pp) may without spot be presented unto thee; through Jesus Christ our Lord. Amen.*

*The Epistle. Heb. xii.*

*My son, despise not the correction of the Lord, neither faint when thou art rebuked of him. For whom the Lord loveth, him he correcteth; yea, and he scourgeth every son whom he receiveth.*

*The Gospel. John v.*

*Verily, verily I say unto you, He that beareth my word, and believeth on him that sent me, hath everlasting life, and shall not come unto damnation; but he passeth from death unto life.*

*The Preface. The Lord be with you.*

*Answer. And with thy spirit.*

*¶ Lift up your hearts, &c.*

*Unto the end of the Canon.*

(pp) may be without spot 1552.

1549.

¶ At the time of the distribution of the holy sacrament, the Priest shall first receive the communion himself, and after minister to them that be appointed to communicate with the sick, (if there be any,) and then to the sick person. And the sick person shall always desire some, either of his own house or else of his neighbours, to receive the holy communion with him, for that shall be to him a singular great comfort, and of their part a great token of charity.

¶ And if there be more sick persons to be visited the same day that the Curate doth celebrate in any sick man's house, then shall the Curate (there) reserve so much of the sacrament of the body and blood as shall serve the other sick persons, and such as be appointed to communicate with them, (if there be any;) and shall immediately carry it, and minister it unto them.

¶ But if any man, either by reason of extremity of sickness, or for lack of (*qq*) warning given in due time to the Curate, or by any other just impediment, do not receive the sacrament of Christ's body and blood; then the Curate shall instruct him, that if he do truly repent him of his sins, and steadfastly believe that Jesus Christ hath suffered death upon the cross for him, and shed his blood for his redemption, earnestly remembering the benefits he hath thereby, and giving him hearty thanks therefore, he (*rr*) doth eat and drink spiritually the body and blood of our Saviour Christ profitably to his soul's health, although he do not receive the sacrament with his mouth.

¶ When the sick person is visited, and receiveth the holy communion all at one time, then

1552.

¶ At the time of the distribution of the holy sacrament, the Priest shall first receive the communion himself, and after minister to them that be appointed to communicate with the sick.

¶ When the sick person is visited, and receiveth the holy communion all at one time, then

(*qq*) warning in due time to the Curate, or for lack of company to receive with him, or by any other 1552.

(*rr*) doth eat and drink the body and blood 1552.

1549.

the Priest, for more expedition, shall use this order at the visitation.

The Anthem.

*Remember not, Lord, &c.*

*Lord, have mercy upon us.*

*Christ, have mercy upon us.*

*Lord, have mercy upon us.*

¶ *Our Father which art in heaven, &c.*

*And lead us not into temptation.*

*Answer. But deliver us from evil. Amen.*

Let us pray.

*O Lord, look down from heaven, &c.*

With the first part of the exhortation, and all other things unto the Psalm.

*In thee, O Lord, have I put my trust, &c.*

And if the sick desire to be anointed, then shall the Priest use the appointed prayer without any Psalm.

1552.

the Priest, for more expedition, shall cut off the form of the visitation at the Psalm, "In thee, O Lord, have I put my trust," and go straight to the communion.

¶ In the time of plague, sweat, or such other like contagious times of sicknesses or diseases, when none of the parish or neighbours can be gotten to communicate with the sick in their houses, for fear of the infection, upon special request of the diseased, the Minister may alone communicate with him.

The Sacrament not to be administered in private save in urgent cases.

Though ministers are bound to visit the sick, and to administer the Sacrament to them in cases of urgency, yet they must not do so unless the circumstances actually require



it. The 71st Canon enacts that:—"No Minister shall preach or administer the holy Communion in any private house, except it be in times of necessity, when any being so impotent as he cannot go to the church, or very dangerously sick, are desirous to be partakers of the holy Sacrament, upon pain of suspension for the first offence, and excommunication for the second. Provided, that houses are here reputed for private houses, wherein are no chapels dedicated and allowed by the Ecclesiastical Law of this realm. And provided also under the pains before expressed, that no Chaplains do preach or administer the Communion in any other places but in the chapels of the said houses, and that also they do the same very seldom upon Sundays and Holydays, so that both the lords and masters of the said houses and their families shall at other times resort to their own parish churches, and there receive the holy Communion at the least once every year."

#### SIXTH.—BURIAL OF THE DEAD.

The introductory rubric of the present Prayer Book, as to excommunicates and suicides, is not found in either the First or Second Book. The first rubric, and the three passages of Scripture following, are the same in all editions; but the two psalms and the lesson which succeed in the present Book, are absent from the two other editions. The next rubric, the extract from Job, and the Supplication are the same in all three editions. The next rubric in the First Book directs, "Then, the Priest casting earth upon the corpse, shall say:

"I commend thy soul to Almighty God and thy body to the ground; earth to earth," &c. The corresponding rubric and commendation by the Priest, are the same in the Second as in the present Book.

In all three there follows the same extract from the Apocalypse.

Prayers for the dead.

Then the First Book contains successively two prayers for the deceased person, and Psalms cxvi. cxxxix. and cxvi. which are all wanting in the Second and in the present Book.

Lesson.

Next comes in the First and Second Books the lesson from 1 Cor. xv.

Responses.

Then the three Responses, and the Lord's Prayer; and next in the First Book only, certain responses. A prayer succeeds, the language of which in the First Book differs considerably from the corresponding prayer in the Second and present Books.

The Holy Communion.

The First Book then interpolates, "The Celebration of the Holy Communion when there is a Burial of the Dead," which contains the 43rd Psalm, the Collect as in the Second and present Books, the Epistle from 1 Thess. iv., and the Gospel from John vi.

Here the Service ends, the concluding Benediction being found in the present Book only.

### LAW RELATING TO BURIAL.

The above being an account of the Service for Burial, it will be convenient to notice some of the chief legal points in connection therewith.

All parishioners have a right to be buried in the churchyard of their own parish without leave of the incumbent. (*b*)

It is the duty of the parish minister to bury all persons dying within his parish, who die Christians, and not excommunicates or suicides. (*i*) This applies as a moral duty to strangers, but these have no legal claim of the kind. (*k*)

Fees may be exacted from strangers;

In the case of strangers, fees for burial may be exacted. Consequently, when the parish possessed a table of fees for the

(*h*) See *Maidman v. Malpas*, 1 Hagg. Cons. 205, 208; *Gilbert v. Buzzar & Boyer*, 2 Hagg. Cons. 333, 348.

(*i*) *Kemp v. Wickes*, 3 Phil. 265, 274. See *ante*, pp. 145-7. (*k*) *Ibid*.

burial of strangers, it was considered sufficient to prove that the churchwardens were authorized to permit the burial of strangers, and permission being asked for laying a stone, and the sum being named, and the fees paid, and the claim being proved by witnesses, and no evidence offered to disprove it, the custom was held to prevail. (*l*)

The courts are very unwilling to curtail or interfere with the right of parishioners to burial. Therefore, where a dispute arose as to the fees payable for the interment of a corpse in an iron coffin, the body having remained unburied pending the dispute, Lord Stowell recommended that the body, which, to use his own expression, "had remained so long unhonoured," should be buried without prejudice to the right of the parish as to the fees to be paid. (*m*)

but not from parishioners,

By custom, fees may be demandable from parishioners. The churchyard as well as the church are the freehold of the minister, subject to the right of the parishioners to interment. Ancient custom often annexes fees for erecting a stone, or anything else by which the grave may be protected and the memory of the person interred preserved. It is no general Common Law right, but custom will interpose, and where it is shown to be customary, such practice will be supported. (*n*)

unless by custom.

And at Common Law, in an action by a rector for fees for burial of paupers, it was held that he was not entitled to recover them, since there was no custom nor a right by Common Law, and that the local acts of the parish did not support the claim. (*o*)

Burial of paupers.

It is the same with regard to burial in the chancel: "No fee can be exacted of common right; it can only be due by special custom, and the amount must be limited by the same custom.

Burial in the chancel.

(*l*) *Bardin & Edwards v. Calcott*, 1 Hagg. Cons. 14, 17.

(*m*) *Gilbert v. Buzzard*, 2 Hagg. Cons. 333.

(*n*) *Bardin & Edwards v. Calcott*, 1 Hagg. Cons. 14.

(*o*) *Spry v. Gallop*, 16 M. & W. 716.

If such a custom have a reasonable foundation, it must at least be strictly proved. It would require very strong authority to show that a right to interment was consequent upon a reasonable fee being paid. (*p*)

Coffins.

As to the use of coffins, "It is to be observed that in the funeral service of the Church of England there is no mention, indeed there is rather an apparently studious avoidance of any mention, of coffins. It is throughout the whole service 'the corpse' or 'the body.' Funerals were anciently coffined and uncoffined, and were charged for accordingly. From which (says Lord Stowell), I might venture to draw this conclusion, that even at that time (the year 1627, referring to a table of fees of that date), it was recognized as not unjust, that where the deceased, by the use of his coffin, took a longer occupancy of the ground, he should compensate the parish by an increased payment." (*q*) "In our own country the use of coffins is extremely ancient, although most probably by no means general, but they are not *nominatim* or directly required by any authority whatever." (*r*)

Notice to be given of Burial.

The 68th Canon requires convenient warning to be given to the minister of the intended burial of a corpse, and it is for those proceeding against him for a refusal to bury to prove that convenient warning was given; consequently where in a suit against a clergyman for such an offence no satisfactory proof of such warning was given, the Court held that no canonical offence had been committed, and dismissed the defendant with costs. (*s*)

#### SEVENTH.—THE REMAINING OFFICES.

The rest of the Prayer Book may be omitted almost entirely from consideration in the present work. It consists of "The

(*p*) *Rich v. Bushnell*, 4 Hagg. Eccl. 164, 173.

(*q*) Per Lord Stowell, *Gilbert v. Buzzard & Boyes*, 2 Hagg. Cons. 346, 347, 3 Phill. 351.

(*r*) *Ibid.* 345.

(*s*) *Titchmarsh v. Chapman*, 1 Rob. Eccl. 177.



Thanksgiving of Women after Child-birth," "A Commination," and "The Form and Manner of Making, Ordaining, and Consecrating of Bishops, Priests, and Deacons."

The first of these was styled in the First Book, "The Order of the Purification of Women." This observance is expressly enjoined by the rubric, but it is generally, not to say universally, omitted even by communicants. The precise time of performing it is not specified, and consequently it is for the ordinary to direct. (*t*)

Thanksgiving  
of women.

The Commination is thus entitled in the first two Prayer Books :—

Commination  
Service.

1549.

*The first day of Lent, commonly called Ash-Wednesday.*

¶ After Matins ended, the people being called together by the ringing of a bell, and assembled in the church, the English Litany shall be said after the accustomed manner; which ended, the Priest shall go into the pulpit, and say thus.

1552.

*A Commination against sinners, with certain Prayers to be used divers times in the year.*

¶ After Morning Prayer ended, the people being called together by the ringing of a bell, and assembled in the church, the English Litany shall be said after the accustomed manner; which ended, the Priest shall go into the pulpit, and say thus.

The Ordination Service, as already mentioned, (*u*) is not found in the first Book, having been compiled in 1550.

Ordination  
Service.

(*t*) See Jebb, "The Choral Service," 532; Sharp, "The Rubric," 72; Mant, "Horæ Liturgicæ," 51.

(*u*) *Ante*, p. 56.

## CHAPTER V.

## CEREMONIAL.

SECTION I.—*Explication of the term Ceremony.*

Difficulty of  
discriminating  
between rite  
and ceremony.



AT the beginning of the last chapter has been pointed out the difficulty of determining the true import in Ecclesiastical Law of the connected terms, rite and ceremony, and the definition given by the present Dean of the Arches was there cited. To this definition, in so far as it relates to the word ceremony, viz. “gestures or acts preceding, accompanying, or following the uttering of certain words,” little if any exception can be taken. Generally this will be sufficiently precise to discriminate a ceremony from any other fact, proceeding, or matter. It may nevertheless occasionally be inadequate. Thus, in reference to the use of lights in the Holy Communion, the Privy Council, alluding to the case above mentioned, observed: (x) “The Dean of Arches seems to have considered that all the practices complained of before him, including this use of lighted candles, were ceremonies. The respondent, in the argument of his counsel at the bar, appeared to prefer to treat the question as one of ornament, and Mr. James said he considered the lighted candles ‘part of the symbolical decoration of the altar.’ If it were necessary to decide which of these views is correct,

Lights as cere-  
monies or orna-  
ments.

(x) L. R. 2 P. C. 387.

their lordships would feel disposed to agree with the Dean of the Arches, that however candles and candlesticks may *per se* be looked upon as a part of the furniture or ornaments of the church, taking the word ‘ornaments’ in the larger sense assigned to it by this committee in *Westerton v. Liddell*, yet the lighting of the candles and the consuming them by burning throughout, and with reference to a service in which they are to act as symbols and illustrations, is itself either a ceremony, or else a ceremonial act forming part of a ceremony, and making the whole ceremony a different one from what it would have been had the lights been omitted. . . . The learned Dean of Arches also, although at the earlier part of his judgment he had stated that the matters complained of before him must be considered as ‘ceremonies,’ appears ultimately to have applied to the use of the lighted candles the law or rubric as to ornaments.”

## SECTION II.—*The General Law Relating to Ceremonial.*

**T**HE legality of any particular ceremony depends primarily and mainly, if not exclusively, upon Elizabeth’s Act of Uniformity. (y) Section 4 makes it penal “If any manner of parson, vicar, or other whatsoever minister that ought or should sing or say common prayer mentioned in the said book, or minister the sacraments, from and after the feast of the Nativity of St. John Baptist next coming, refuse to use the said common prayer or to minister the sacrament in such cathedral or parish church or other places as he should use to minister the same, in such order and form as they be mentioned and set forth in the said book, or shall wilfully or obstinately standing in the same use any other rite, ceremony, order, form, or manner of celebrating of the Lord’s Supper, openly or privily, or matins, evensong, adminis-

Legality of ceremonies.

(y) 1 Eliz. c. 2.

tration of the sacrament, or other open prayers than is mentioned and set forth in the said book (open prayer in and throughout this Act is meant that prayer which is for others to come unto or hear either in common churches, or private chapels or oratories, commonly called the service of the church),” he shall be subject to the penalties by the Act provided.

Mutable ceremonies.

In *Martin v. Mackonochie*, the Dean of the Arches Court laid down (z) “that, in addition to the ceremonies expressly directed or expressly forbidden to be observed, others there are, designated ‘mutable,’ the legality of which will depend upon other considerations ; that the criterion of the legality of such ceremonies consists in their conformity with primitive and catholic use, and not in antagonism to Rome ; that the mere fact of their identity with the ceremonies in use before the Reformation is not sufficient ground from which to deduce their unlawfulness, nor does the fact that a practice is novel prove that it is unlawful ; and that things neither ordered nor prohibited expressly or by implication in the Prayer Book, are within the domain of the bishop of the diocese within which they occur, to deal with by monition.”

The Privy Council as to “mutable” ceremonies.

But the Privy Council in their judgment in the same case on appeal (a) threw very great doubts upon the accuracy of these opinions. In reference to the question of “mutable” ceremonies, they said : “It was contended on behalf of the respondent that the act complained of was one of those minute details which could be taken to be covered by the provisions of the rubric ; that the rubric could not be considered as exhaustive in its directions, for no order could be shown in it requiring the celebrating minister to kneel while himself receiving the bread and wine ; and that there was no charge or evidence against the respondent, that, in kneeling after the consecration, any adoration of the sacrament was intended. Their lordships are of opinion that it is not open to a minister of the Church, or even

(z) See the footnote, L. R. 2 Adm. & Eccl. 116-7.

(a) L. R. 2 P. C. 365, 382-3, 388, 388-9.



to their lordships, in advising Her Majesty, as the highest ecclesiastical tribunal of appeal, to draw a distinction in acts which are a departure from or violation of the rubric, between those which are important and those which appear to be trivial. The object of a Statute of Uniformity is, as its preamble expresses, to produce 'an universal agreement in the public worship of Almighty God,' an object which would be wholly frustrated, if each minister, on his own view of the relative importance of the details of the service, were to be at liberty to omit, to add to, or to alter any of those details. The rule upon this subject has been already laid down by the Judicial Committee in *Westerton v. Liddell*, and their lordships are disposed entirely to adhere to it. In the performance of the services, rites, and ceremonies ordered by the Prayer Book, the directions contained in it must be strictly observed; no omission and no addition can be permitted."

As to whether ceremonies not specifically abolished were or may be retained, they laid down: "If the use of lighted candles in the manner complained of be a ceremony or ceremonial act, it might be sufficient to say that it is not—nor is any ceremony in which it forms a part—among those retained in the Prayer Book, and it must, therefore, be included among those that are abolished; for the Prayer Book, in the Preface, divides all ceremonies into these two classes. Those which are retained are specified, whereas none are abolished specifically or by name; but it is assumed that all are abolished which are not expressly retained."

Privy Council as to ceremonies not specifically abolished.

And as to the interpretation and weight to be given to Elizabeth's Act of Uniformity in connection with canons or injunctions which conflict with its provisions, their lordships laid down thus: "The learned judge of the Arches Court was of opinion that these lights were ordered by Injunctions [*i.e.* of Edward VI.] having statutable authority, which Injunctions had not been directly repealed; that they were primitive and catholic in origin, evangelical in their proper symbolism, purged from all

Whether the Canons and Injunctions or Statutes are to govern in matters of ceremonial.

superstition and novelty by the Church; and that therefore it was lawful to place them on the Holy Table during the time of the Holy Communion, for the signification that Christ is the very true light of the world.

Use of lights in early times.

“The authorities cited show beyond all doubt the very ancient and general use in the Church of these symbolical lights, and the Injunction to which the learned judge refers is the third of those issued A.D. 1547, in the first year of the reign of King Edward VI. By this it was ordered ‘that images should be taken down and destroyed, and that spiritual persons should suffer no torches or candles to be set afore any image or picture, but only two lights on the high altar before the sacrament, which for the signification that Christ is the very true light of the world, they should suffer to remain.’ It would deserve consideration, how far under any circumstances this Injunction could now be held operative, having regard to the words ‘upon the high altar before the sacrament,’ and to the distinction pointed out by this committee in *Westerton v. Liddell*, (a) *Parker v. Leach*, (b) between the sacrificial altar and the communion table.

The Injunctions of Edward VI. repealed in part by 1 Eliz. c. 2, s. 27.

“But without dwelling on this, and without stopping at this place to inquire into the nature of the authority under which the Injunctions of 1547 were issued, their lordships are clearly of opinion, the Injunction in question, so far as it could be taken to authorize the use of lights as a ceremony or ceremonial act, was abrogated or repealed by the Act 1 Eliz. c. 2, particularly by section 27, already mentioned, and by the present Prayer Book and Act of Uniformity; and that the use of lighted candles, viewed as a ceremony or ceremonial act, can derive no warrant from that Injunction. Reference was made in the argument for the respondent to a Constitution of the Council of Oxford, under Walter, Archbishop of Canterbury, A.D. 1322.

(a) Moore, Special Report, pp. 176, 184.

(b) Moore, 4 P. C. C. (N. S.), 199.

That Constitution is in these words : ‘Tempore quo missarum solemnía peraguntur accendentur duæ candelæ vel ad minus una,’ and is apparently a repetition of the earlier Constitution of A.D. 1222 : (c) ‘Tempore quo missarum solemnía peraguntur accendentur duæ candelæ vel ad minus una cum lampade.’ As to these Constitutions, it is sufficient to say that in their lordships’ opinion they must be taken, if of force at the time of passing of any of the Acts of Uniformity, to have been repealed by those Acts.”

If a particular ceremony is unlawful if done during, and as part of, a service, it is equally unlawful, though done prior to the service, if it can be so connected with the service as to be incidental to, and in reality parcel of it. This was so decided by the Privy Council in *Hebbert v. Purchas* (d), with reference to the mixing of water with wine for the Holy Communion prior to the service. They said, “Since it has been decided by this committee that additional ceremonies or innovations are excluded by implication by the service for Holy Communion, or in other words that the service for Holy Communion is not only a guide, but a sufficient guide in its celebration, and since the learned judge has decided that the act of mingling wine with water in the service, with a view to its administration, is one of the additional ceremonies so excluded, the first question is, whether the doing the act before the service, and in the vestry or elsewhere, could so alter the symbolical character of the act, that the cup might be brought in and consecrated and administered to the people, without constituting an innovation or additional ceremonial act beyond what is ordered in the service . . . Their lordships are unable to arrive at the conclusion that if the mingling and administering in the service water and wine is an additional ceremony, and so unlawful, it becomes lawful by removing from the service the act of mingling, but keeping the mingled cup itself, and administering it.”

When a forbidden ceremony is performed not during the time of Divine Service.

(c) Wilkins, “Concilia,” vol. i. p. 595.

(d) L. P. 3 P. C. 605, 652.

### SECTION III.—*Ceremonies Connected with the Ordinary Services.*

Rubrics in  
Common  
Prayer must be  
followed.



AS the first and most general rule in connection with the performance of ceremonial acts during the time of Divine Service,<sup>(e)</sup> whether by the priest or other officiator, or by the congregation, is that which was first laid down in *Westerton v. Liddell*, and what has already in the second section of this chapter since been repeatedly recognized and affirmed.

Only ceremonies in it mentioned may be used.

These contain the essential rules which over-ride all others, from whatever source drawn, which may happen to conflict. As has been seen, the Privy Council, in their decision in a recent case, referring to and basing their judgment upon the division made in the preface to the Prayer Book of ceremonies into those which are and those which are not retained, have decided that no ceremonies or other formalities are allowable save such as are expressly and positively enjoined in the Prayer Book. This judgment, however, must be construed with one of two qualifications. Either it applies to such ceremonies (using that term as including every external act in the conduct of worship,) only as are to be deemed of vital significance, or the word "ceremonies" must be limited to the proceedings directed to be done by the priest or other officiator without the concurrence of the congregation. It will, perhaps be the simpler and more correct course to give in the present chapter to the word the latter and more restricted meaning, and to reserve for treatment in the following chapter those proceedings and matters of detail which assimilate to but which are not technically "ceremonies." <sup>(f)</sup>

#### PROCESSIONS.

Processions.

No rubric and no statute directs, as a part of or as incident:

<sup>(e)</sup> Or ancilliary thereto. See *ante*, p. 169.

<sup>(f)</sup> See, however, the language of the Privy Council as to trivial matters *ante*, pp. 166-7.



to any service, an arranged and laboured procession of ministers and attendants to, through, or around the sacred edifice. On the contrary, the 18th of Elizabeth's Injunctions expressly prohibits all such: "To avoid all contention and strife which heretofore has risen among the queen's majesty's subjects in sundry places in procession, and also that they may the more quietly hear that which is said or sung to the edifying, they shall not from henceforth in any parish church at any time use any procession about the church or churchyard or other places; but immediately before the time of communion of the Sacrament the priest with other of the quire shall kneel in the midst of the church, shall sing or say plainly and distinctly the Litany which is set forth in English, with all the suffrages following, to the intent the people may hear and answer, and none other procession or litany to be used but the said litany in English, adding nothing thereto but as it is now appointed. And in cathedral or collegiate churches the same shall be done in such places and in such sort as our commissioners in our visitation shall appoint."

18th Injunction  
of Elizabeth.

The illegality of processions not directed by the rubric has been conclusively determined by the decision in *Elphinstone v. Purchas*. (g) The 4th article charged as follows: "That you, the said Rev. John Purchas, on the several occasions mentioned immediately before, but at the hour appointed for the commencement of the prayers appointed to be read at Morning and Evening Service respectively, and without any break or interval, and as connected with and being the beginning of and a part of the rites and ceremonies of public worship, on the said several occasions, in the presence of the congregation then assembled in the said church or chapel of St. James, Brighton, for the purpose of hearing Divine service, formed, or caused to be formed, a procession composed of a thurifer carrying an incense vessel containing incense, swinging the same; a crucifer bearing a crucifix, a large cross, with a figure of the Saviour thereon; two acolytes, or boys dressed in red and white, with red skull

Charges in the  
Purchas case  
as to proces-  
sions.  
Article 4.

caps on their heads and bearing lighted candles ; several deacons or other persons, bearing one or more silk banners, with a cross or other device embroidered on each of such banners ; divers choristers dressed in red and white ; a person called a ceremoniarus in cassock and cotta with blue tippet ; two persons called rulers of the choir, in copes ; you, the said Rev. John Purchas and the other officiating minister of the day, in copes ; that the procession so formed proceeded round the said church or chapel of St. James singing a certain hymn, being No. 100 of the hymns contained in a book called “ Words of the Hymnal Noted,” or some other hymn from the same book ; and that immediately on the return of each of such processions on each of the said several occasions to the choir, the prayers of the day were commenced ; and that on a certain other occasion to wit, on Sunday, February the 28th, 1869, immediately after the Benediction at Evening Service, and without any break or interval, and as connected with and forming the conclusion of and part of the rites and ceremonies of public worship, formed or caused to be formed a like procession to the one immediately hereinbefore-mentioned, and proceeded therewith round the said church, singing as aforesaid in the presence of the congregation assembled.”

Article 14.

And the latter part of the 14th article charged, “ That you then formed or caused to be formed a procession, consisting of a thurifer with his incense vessel containing incense, the crucifer with a large crucifix, acolytes, or boys with lighted candles, the person called ceremoniarus, an assistant minister, and you, the Rev. John Purchas, in a cope, followed by several members of the congregation, each with a lighted candle ; that the procession so formed proceeded round the interior of the said church or chapel singing ; that thereupon afterwards, you the said Rev. John Purchas, took off your cope, and wearing white alb with gold stole and chasuble, proceeded to the Communion Table, and, after being yourself censured, commenced the Communion Service, during the reading of which the congr

gation extinguished their candles. That after the Collect and Epistle had been read the said candles were, during the reading of the Gospel, again lighted, and were then again extinguished, each of the acts in this article hereinbefore set forth being of the nature of and intended by you as and constituting a religious ceremony."

And the 26th article charged to the same effect :—" That Article 26.  
you, the said Rev. John Purchas, in the said church or chapel of St. James, Brighton, aforesaid, on the Sunday next before Easter, March the 21st, 1869, at Morning Service and during or immediately after the conclusion of Morning Prayer, and before the commencement of the Communion Service, sprinkled or caused to be sprinkled with so-called holy water, and blessed or consecrated, or caused to be blessed or consecrated, and censed or caused to be censed, divers palm branches then lying on a table placed near to the Communion Table; and that after the said Morning Prayer was concluded you caused the said palm branches to be distributed to yourself and to divers other clerks in holy orders, to persons of the choir, and members of the congregation then and there present in the said church or chapel; and that you then caused to be formed a procession in the said church or chapel, with a crucifix borne before it, and consisting of the thurifer, choristers, priests, and others, which said procession then proceeded round the interior of the said church or chapel chanting and elevating the said palm branches, and accompanied with lighted candles; and that on the return of the procession the Communion Service was immediately commenced and proceeded with, the whole taking place in the presence of the congregation then assembled to hear Divine service, and as a ceremony connected therewith, without break or intermission."

As to the offences herein set forth, the Dean of Arches said : Decision of  
the Dean of  
Arches.  
" It appears to me that these particular processions have been so conducted as to constitute a further rite or ceremony in connection with the Morning and Evening Service, and in addition

to those prescribed by the rubrics for those services. I must therefore, placing them under this category, pronounce them illegal."

### CEREMONIAL USE OF CROSSES, CRUCIFIXES, AND IMAGES.

Ceremonial use of crosses, crucifixes, or images illegal.

The employment of these articles for purposes of ornamentation and decoration will be considered in chapters viii. and ix. of this part. In respect of their introduction into the services as rites or ceremonies, it may be at once laid down broadly and unreservedly, that no rubric, statute, or other authoritative ecclesiastical enactment enjoins or declares allowable as parcel of or subsidiary to a service, any material representation of any fact, phenomenon, occurrence, attribute, or entity whatever, Divine or human, and consequently that all such proceedings are illegal.

As to crosses, the Privy Council, in *Westerton v. Liddell*, (h) said:—"Next, with respect to the wooden cross attached to the Communion Table at St. Paul's. Their lordships have already declared their opinion that the Communion Table intended by the canon was a table in the ordinary sense of the word, flat and movable, capable of being covered with a cloth at which or around which the communicants might be placed in order to partake of the Lord's Supper; and the question is whether the existence of a cross attached to the table is consistent either with the spirit or with the letter of these regulations. Their lordships are clearly of opinion that it is not; and they must recommend that upon this point also the decree complained of should be affirmed." This decision is perhaps rather against the use of a cross as an ornament than in a ceremonial manner.

Purchas case. Use of crucifixes and crosses.

In the suit of *Elphinstone v. Purchas*, (i) the following article contained charges of the unlawful use of crucifixes and crosses; and it was held that the charges were established and that the

(h) Moore, Special Report, 185-6. (i) L. R. 3 P. C. 66, 97, 105.



practices were unlawful; and the defendant was monished to abstain from them.

Article 5. "That on a certain occasion (to wit, on Sunday morning, November the 1st, 1868) you, the said Rev. John Purchas, in the said church or chapel of St. James, Brighton, aforesaid, caused a group of acolytes or attendants to stand or kneel round you, and a person called the crucifer to stand by the side of you, bearing a crucifix or gilt cross, with the figure of the Saviour thereon, as a matter of ceremony, during the reading by you, the said Rev. John Purchas, of the Gospel in the Communion Service; that on certain other occasions (to wit, on Easter Eve, 1869, Saturday evening, May the 15th, 1869, and on Whit Sunday evening, May the 16th), the 'Te Deum' being on each of such occasions sung as a part of Evening Service immediately after the Evening Prayers, in the said church or chapel of St. James, Brighton, aforesaid, the congregation remaining in the said church or chapel during the singing thereof, you, the said Rev. John Purchas, during the singing thereof, caused the said crucifer, with his said crucifix, and the bearers of banners, to stand holding the same as a matter of ceremony near to you, the said Rev. John Purchas, and in front of the Holy Table."

Article 6. "That you, the said Rev. John Purchas, on the several occasions hereinafter in this article mentioned, in the said church or chapel of St. James, Brighton, aforesaid (to wit, on Sunday, November the 1st, 1868; on Sunday, November the 8th, 1868; Sunday, January the 31st, 1869), placed, or caused to be placed on the Holy Table, or on a narrow ledge resting thereon, or connected therewith, or fixed immediately above the same, so as to appear to the congregation to be in contact or connection with the Holy Table, a large metal crucifix, with a figure of the Saviour thereon (the same being intended for a ceremonial or religious purpose, and not being a part of the architectural decorations of the church, but being placed on such ledge with the object and intention of being made to

Use of images.

appear a part of the furniture of the Holy Table); and that you, on the said several occasions, allowed the same so placed to remain there during the performance of Divine service, and during the celebration of the Holy Communion. That you, the said Rev. John Purchas, also, during Lent (to wit, on Sunday, February the 28th, 1869, and on Sunday, March the 14th, 1869, and on Good Friday, March the 26th, 1869), having covered, or caused to be covered, the said crucifix so placed on the Holy Table or narrow ledge as aforesaid, with a white veil striped with a red cross, allowed the same to remain on the said Holy Table or narrow ledge so covered, during the performance of Divine service. That you also afterwards (to wit, on Easter Sunday, March the 28th, 1869), having previously removed, or caused to be removed, such veil, kept the said crucifix during Divine service so uncovered; the circumstance of the said crucifix being so kept covered and uncovered, being intended as and constituting on each of the said occasions a ceremonial and symbolical observance, during and connected with such Divine service."

Article 7. "That you, the said Rev. John Purchas, in the said church or chapel of St. James, Brighton, aforesaid, on the following occasions (to wit, on Sunday, November the 8th 1868; January the 17th, 1869; and Whit Sunday, May the 16th, 1869), did immediately before, and during the performance of Divine service, bow and do reverence to the said crucifix."

Kissing the  
books of ser-  
vice.

Kissing any of the books used during the conduct of Public Worship, can scarcely be other than a ceremonial proceeding and, not being enjoined, will be illegal. It was so expressly decided in *Elphinstone v. Purchas*, (j) the exact charge the being, "That you . . . during the Communion Service directed, caused, or permitted, and sanctioned, a certain clergyman then assisting you in the performance of Divine service by reading

(j) L. R. 3 Adm. & Eccl. 66, 108.

the Gospel for the day, to kiss the book from which he read the Gospel, such kissing of the book being intended as and constituting a matter of ceremony, the said book, during such reading of the Gospel, being in a ceremonial manner, held before him by a deacon or attendant."

# ACTS OF REVERENCE.

Bowing and kneeling at the name of Jesus, taken *per se*, and as unaccompanied by other proceedings or circumstances which cause a superstitious meaning or importance to be attached to these acts, are not merely allowable, but positively enjoined. The 52nd of Elizabeth's Injunctions, (*k*) says:—"In time of the Litany, and all other collects and common supplications to Almighty God, all manner of people shall devoutly and humbly kneel upon their knees, and give ear thereunto; and that whensoever the name of Jesus shall be in any lesson, sermon, or otherwise in the church pronounced, that due reverence be made of all persons, young and old, with lowness of courtesy, and uncovering of heads of the menkind, as thereunto doth necessarily belong, and heretofore hath been accustomed."

Bowing at the name of Jesus;

enjoined by Elizabeth's Injunctions;

To the same effect is the 18th Canon: "When in time of Divine service, the Lord Jesus shall be mentioned, due and lowly reverence shall be done by all persons present, as hath been accustomed."

And by the 18th Canon.

But bowing and kneeling, even when practised in the manner here enjoined, may be still done with such attendant circumstances as to constitute a ceremony, and then, if not directed by the rubrics, they will be unlawful. In *Martin v. Mackonochie*, (*l*) one of the charges was that the defendant had "knelt or prostrated himself before the consecrated elements during the Prayer of Consecration, and permitted or sanctioned such kneeling or prostration by the other clerks in holy orders." Sir Robert Phillimore

Bowing, &c. must not amount to a ceremony.

Decision of Sir R. Phillimore;

(*k*) See *post*, part iii. chap. iii.

(*l*) L. R. 2 Adm. & Eccl. 116, 118, 211.

decided that the offence, if any here set forth, could not be made the subject of a criminal prosecution. He said that this “belonged to those cases which should be referred to the bishop, in order that he may exercise thereupon his discretion.” But this would seem to have been a dictum, and the actual decision apparently was upon the ground that “the rubric [*i.e.* of the Communion Service] does not give precise direction that the celebrant himself should kneel at the time when it appears that Mr. Mackonochie does kneel.” The Privy Council, however, held that the rubric does give precise directions in that behalf, and that Mr. Mackonochie had violated the same. They said (*m*): “As to the kneeling after the consecration of the chalice, it might possibly be suggested that it was a kneeling after finishing the Prayer of Consecration, and with reference to the next part of the Service, in which the celebrant becomes himself the recipient. Omitting, therefore, for the present, the elevation and the second kneeling, the evidence remains, that the respondent after commencing the Prayer of Consecration standing, paused in the middle of the prayer, knelt down, inclining or prostrating his head towards the ground, and then, rising up again, continued the prayer standing.

and of the  
Privy Council,  
as to the le-  
gality of bow-  
ing, &c.

Construction to  
be given to the  
rubrics relating  
to the Holy  
Communion.

Posture of the  
priest during  
the Lord's  
Prayer ;

the Command-  
ment ;

the Collects ;

the Epistle and  
Gospel ;

“In order to bring the conduct of the respondent on this head to the test of Ecclesiastical Law, it is proper now to turn to the rubric of the Order of the Administration of the Holy Communion.

“The Lord's Prayer and the collect, with which the service commences, are to be said by the priest, ‘standing at the north side of the table.’

“The priest is then to turn to the people and rehearse distinctly all the Ten Commandments, ‘the people still kneeling,’ implying that the priest is still to stand.

“This is to be followed by one of the collects for the Sovereign, the priest standing as before, and by the collect for the day.

“The priest is then to read the Epistle and the Gospel, and



to say the Creed, during which no change of attitude is indicated.

“After the sermon, when the priest has returned to the Lord’s Table, the sentences of the offertory, the prayer for the Church militant, and the Exhortations, are to be said by the priest, without any direction as to change of posture, and then at the Confession, he, as well as all the people, is directed to kneel.

the offertory  
prayer for  
Church mili-  
tant, &c.

“For the Absolution and sentences which follow, the priest is directed to stand up and to turn himself to the people ; for the words, ‘It is very meet,’ &c., and the prefaces he is to turn to the Lord’s Table, and he is then to kneel down at the Lord’s Table, and in the name of all recipients, say the prayer, ‘We do not presume,’ &c.

the Absolution.

“The rubric before the Prayer of Consecration then follows, and is in these words : — ‘When the priest standing before the Table, hath so ordered the bread and wine, that he may with the more readiness and decency break the bread before the people, and take the cup into his hands, he shall say the Prayer of Consecration as follows.’

The Prayer of  
Consecration.

“Their lordships entertain no doubt on the construction of this rubric, that the priest is intended to continue in one posture during the prayer, and not to change from standing to kneeling, or *vice versâ*, and it appears to them equally certain that the priest is intended to stand and not to kneel. They think that the words ‘standing before the table’ apply to the whole sentence, and they think this is made more apparent by the consideration that acts are to be done by the priest before the people as the prayer proceeds, such as taking the paten and chalice into his hands, breaking the bread, and laying his hand on the various vessels, which could only be done in the attitude of standing.

The Priest is  
to stand.

“This being in their lordships’ opinion the proper construction of the rubric, it is clear that the respondent by the posture or the change of posture which he has adopted during the prayer, has violated the rubric and committed an offence within

the meaning of the 13 & 14 Car. II. c. 4, ss. 2, 17, 24, taken in connection with the 1 Eliz. c. 2, and punishable by admonition under section 23 of the latter statute."

Kneeling and  
genuflexion.

Between kneeling—that is, bending the knees so as to touch the ground or other support, and genuflexion—that is, merely bending them, there is not in a common sense view, and it has also been expressly decided not in the view of law, any substantial difference. Consequently whatever applies to the one will apply equally to the other; where and when kneeling is allowable or forbidden, there and then genuflexion will be similarly allowable or forbidden. This statement, however, must probably be taken with some qualification, *e.g.*, a rubrical or statutory direction to kneel would scarcely be satisfied by a mere genuflexion.

Decision of the  
Privy Council  
as to genu-  
flexion.

A question upon this point arose out of the first suit of *Martin v. Mackonochie*, where the respondent was admonished, *inter alia*, "not to kneel or prostrate himself before the consecrated element during the Prayer of Consecration." (n) Complaint was made that the monition was not duly observed, and a petition to that effect was presented to the Privy Council. In reply thereto Mr. Mackonochie said: "I admit that it is my practice during the Prayer of Consecration when celebrating Holy Communion"—the time, therefore, is exactly fixed to which the monition would apply—"and whilst standing before the Holy Table, reverently to bend one knee at certain parts of the said prayer, and occasionally in so doing my knee momentarily touches the ground, but such touching of the ground is no part of the act of reverence intended by me. Whether my knee may have thus momentarily touched the ground on either of the days mentioned in the said affidavits on which I am stated to be the celebrating priest I am, of course, unable to say."

Judgment of  
Lord Hather-  
ley.

In reference to this Lord Hatherley, delivering the decision of the Privy Council, said: "The case as stated is this: Mr Mackonochie being enjoined against kneeling during the

(n) See the monition, L. R. 2 P. C. 392.

prayer, admits a gesture which he contends is not kneeling, but he admits a bowing of his knee, a bowing of it to an extent which occasions it at times momentarily to touch the ground. . . . First of all their lordships would consider the literal question which is before them, whether there has been even a literal compliance with the monition in this act of Mr. Mackonochie. Their lordships are all of opinion that there has not been even a literal compliance; that Mr. Mackonochie has knelt; and that bowing the knee in the manner which he has described is kneeling, and that it is not necessary that a person should touch the ground in order to perform such an act of reverence as will constitute kneeling. Of course there may be such a bowing of the knee as would not amount to kneeling in the sense of the monition, but Mr. Mackonochie very properly says that he takes no advantage of any suggestion of that sort; there may be an accidental bowing of the knee, as would arise from fatigue or otherwise; but here is a knee bent for the purpose of reverence, and in such a manner that those who behold cannot tell whether or not what Mr. Mackonochie and Mr. Walker call kneeling—that is, touching the ground with the knee—has been arrived at, and indeed Mr. Mackonochie says that at certain times his knee has momentarily touched the ground. This seems to their lordships to be literally kneeling.”

A second monition to the same purport as the former was issued. “Mr. Mackonochie with the same object which he has always had in view, to pay only the closest literal obedience to the monition, gave notice to his curates that he intended thenceforth to bow without bending the knee at the part of the Prayer of Consecration, where he had previously knelt. This intention he and his curates carried out, according to the description given in the affidavits, by bowing down towards the Table after replacing the wafer upon it, and remaining some seconds in that position, and adopting the same course with respect to the cup.” Therefore a second application was made to the Privy

Bowing held  
equivalent to  
kneeling.

Council (o), and their lordships held that, whatever might be the exact nature of the acts so described, they were within and constituted a breach of the order "not to kneel or prostrate himself;" and they consequently suspended him for three months from the exercise of all clerical duties.

Prostration—  
meaning of.

It need scarcely be added even by way of caution, that the term prostration used above is not a *nomen artis*, and has no technical meaning, but differs only in degree from bowing, kneeling, and the like, merely denoting an exaggeration of the acts and proceedings signified by those terms.

Adoration.

Bowing and kneeling being illegal when carried on at improper times and occasions, even though intended to be merely reverential observances, it follows *à fortiori* that if they assume the form of adoration they must be utterly unlawful. But "such a charge, involving as it would an inquiry into sentiments and feelings, of which no tribunal can adequately judge, would be difficult of proof; and the rubrical enactments appear to have been wisely confined to prescribing an order of service free from those outward movements which had become more or less associated with errors in doctrine, which, at the Reformation, were renounced." (oo)

Sheppard v.  
Bennett.

It may, however, happen that a charge of this kind can be based upon and established by unmistakeable evidence derived from the writings or the language of a delinquent. Thus in *Sheppard v. Bennett* (p) the 25th article was: "That in or by the passage lettered H hereinbefore set forth in the sixth preceding article, you have maintained or affirmed and promulgated the doctrine that adoration or worship is due to the consecrated bread and wine," and the 27th: "That in or by the passages lettered D O, and S, hereinbefore set forth in the seventh preceding article you have maintained or affirmed and promulgated the doctrine that adoration is due to Christ present upon the altars (thereby referring to the Communion tables) of the churches of the sa

(o) L. R. 3 P. C. 409.

(oo) L. R. 2 P. C. 384.

(p) L. R. 3 Adm. & Eccl. 167, 176-7.



United Church of England and Ireland in the sacrament of the Holy Communion under the form of bread and wine, on the ground that under their veil is the sacred body and blood of our Lord and Saviour Jesus Christ."

And both Sir Robert Phillimore and the Privy Council upon appeal held (q) "that the doctrine so charged, namely, that adoration is due to the consecrated elements, is contrary to law and must be condemned."

It will be observed that the reverential acts in dispute in *Martin v. Mackonochie* were done during and in connection with the Communion Service. The judgments are confined to such, and nothing was said as to similar proceedings performed during other portions of Public Worship. Bowing and kneeling, within certain limits, and upon certain occasions, are, it has already been pointed out, (r) unquestionably allowable. The difficulty is in determining when such acts pass from the category of "permissive though not compulsory" into that of forbidden.

Bowing and kneeling, when allowable.

One other instance may here be noted, viz. that of "bowing to the altar." The seventh of the Canons of 1640 enjoins: "Whereas the church is the house of God, dedicated to his holy worship and therefore ought to mind us both of the greatness and goodness of his Divine majesty, certain it is that the acknowledgment thereof not only inwardly in our hearts but also outwardly in our bodies must need be pious in itself, profitable unto us, and edifying unto others. We therefore think it very meet and behoveful, and heartily commend it to all good and well affected people members of this church, that they be ready to tender unto the Lord the said acknowledgment by doing reverence and obeisance both at the coming in and going out of the said churches according to the most ancient custom of the primitive church in the present time, and of this church also for many years of the reign of Queen Elizabeth. The reviving therefore of this ancient and laudable custom we heartily commend to the serious consideration of all people, not with any

Bowing to the Altar.

(q) L. R. 4 P. C. 413.

(r) *Ante*, p. 177.

intention to exhibit any religious worship to the communion table, the east, or the church, or anything therein contained, in so doing, but only for the advancement of God's majesty, and to give him alone that honour and glory that is due unto him otherwise." This canon of course is not of legal obligation, but it is indicative of the views of the Church in this respect. (rr)

Making the  
sign of cross.

Closely allied to bowing and kneeling, is the ceremony of "crossing," or making the sign of the cross. This ceremony, though perfectly praiseworthy in itself, considered as a mark of devotion, may like bowing and kneeling, and indeed much more readily than these, be turned into a superstitious performance, and so become unlawful. This constituted one of the charges in *Elphinstone v. Purchas*, (s) thus stated: "That you the said Rev. John Purchas, in the said church or chapel of St. James, Brighton, aforesaid, on divers occasions . . . during the saying of the Apostles' Creed and Nicene Creed, and at the pronouncing of the Absolution in the Order for the Holy Communion, and at the giving of the elements to the communicants, and on certain other occasions . . . during the pronouncing of the Benediction, after the sermon, and on certain other occasions . . . when about to mix water with the wine, and when about to consecrate the same, you, being then the officiating minister, made a sign of the cross by the appropriate gesture for that purpose, the same being intended as and constituting a ceremony." The Dean of Arches decided, in deference to prior decisions of the Privy Council, that this proceeding was illegal.

*Elphinstone v.*  
*Purchas.*

#### VARIOUS OTHER CEREMONIES.

Numerous other acts and proceedings in the nature of ceremonies there are which have come before the courts at different

(rr) See a reply by the late Bishop of Exeter to the inhabitants of Falmouth, where he says: "I must decline issuing any directions to the rector to discontinue [such bowings] . . . I do not, indeed, practise this obeisance myself 'in coming in and going out of church,' but I respect the freedom of others." Stephens, "Eccl. Statutes," vol. ii. p. 2061.

(s) L. R. 3 Adm. & Eccl. 66, 108.

times, and which cannot be placed under either of the foregoing specific heads. One of the charges against Mr. Purchas was, "That you the said Rev. John Purchas did, in the said church or chapel of St. James, Brighton, aforesaid, on Ash Wednesday, February the 10th, 1869, at Morning Service, immediately after the conclusion of the Communion and before commencing the Communion Service (you being then the officiating minister), proceed as a matter of ceremony in connection with the Divine service of the day, to take from the Holy Table a certain vessel, previously placed thereon, filled with a black powder being or resembling ashes; and did then bless or consecrate the same, and did then rub a portion of such powder on the foreheads of certain persons, members of the congregation, who then knelt before you for that purpose (to wit a certain other clergyman then present, the person called the ceremoniarus, a person called a ruler of the choir, and certain acolytes or boys); and did further then publicly invite any other members of the congregation to come forward for the like purpose; after which, none others having come forward, the Communion Service was commenced and proceeded with." The proceeding here indicated the Dean of Arches decided to be a ceremony, and to be unlawful. (t)

Use of ashes.

A stop or pause in the midst of a prayer or other portion of the Service would seem *prima facie* to be quite as much a ceremony as any other observance, and therefore if not appointed by the rubric, to be simply illegal. The contrary, however, has been held. One of the articles in *Elphinstone v. Purchas* (u) charged that the defendant "at divers times mentioned during the Communion Service, when reading the prayer for the whole state of Christ's Church militant here on earth, made a considerable, unnecessary, and unusual pause of about half a minute after pronouncing the words, 'Departed this life in Thy faith

Making pauses in service.

(t) L. R. 3 Adm. &amp; Eccl. 97.

(u) L. R. 3 Adm. &amp; Eccl. 66, 67.

and fear'; and made such pause not accidentally or from any infirmity, but of set purpose and habitually." Sir Robert Phillimore directed this article to be struck out, upon the ground that the charge contained in it did not constitute a charge for which a clerk could be made criminally answerable in an Ecclesiastical Court.

Use of holy  
water.

The use of holy water was one of the numerous offences charged against Mr. Purchas. The 25th article stated: "That you the said Rev. John Purchas, in the said church or chapel of St. James, Brighton, . . . . caused holy water or water previously blessed or consecrated, to be poured into divers receptacles for the same in and about the said church, in order that the same might be used by persons of the congregation before and during the time of Divine service, by way of ceremonial application thereof; and yourself used the same, or caused or permitted the same to be used by others." The Dean of Arches intimated that such a practice was unlawful: he did not however expressly decide the point, since he held that the charge was not substantiated so as to fix Mr. Purchas with responsibility. He said: "There is no evidence to sustain the averments that Mr. Purchas caused holy water, or water previously blessed or consecrated, to be poured into divers receptacles in and about the church, or that he blessed or consecrated any water, or that he used it himself, or that he caused it to be used by others; there is evidence that there was water in the church, and that some of the congregation crossed themselves with it. I am of opinion that the criminal charges laid against Mr. Purchas in this article are not proved." (x)

(x) L. R. 3 Adm. & Eccl. 108.



SECTION IV.—*Ceremonies specially connected with the Communion Service.*

NE of the chief disputes in connection with the Communion Service, and more particularly with the administration of the Holy Supper, has been,—it can scarcely be said is,—as to the employment of lights upon or near to the Holy Table, and during particular parts of the Service.

Ceremonies connected with the Holy Communion.

First: Such lights as may be required *bonâ fide* in the chancel, whether before or during the Communion Service, or any part of it, are perfectly allowable; and those lights may be of such material and shape, and may be so placed or erected as is most agreeable to the responsible authorities of the place of worship in question; provided always that advantage be not taken of the power to use lights—needed, and therefore lawful—in such a way as to constitute a rite, or to give them a superstitious significance, and therefore to render the use unlawful.

Use of light for illumination;

Secondly: If, on the other hand, lights are introduced, whether as a ceremony, or merely as symbolical, when not in reality needed for purposes of illumination, it seems now established that such is unlawful. In the first section of this chapter, the question of lights, in so far as it depends upon the third of the Injunctions of 1547, viz.—“shall suffer henceforth no torches, nor candles, tapers, or images of wax to be set afore any image or picture, but only two lights upon the High Altar before the Sacrament, which, for the signification that Christ is the very true light of the world, they shall suffer to remain still”—was incidentally considered, and it was there seen that the Privy Council have laid down, that as a result of subsequent legislation, “the use of lighted candles, viewed as a ceremony or ceremonial act, can derive no warrant from that Injunction.” And as such use was unsupported by the rubric, their lordships held it,

As a ceremony.

i.e. "two lighted candles upon the High Altar," to be illegal; *Martin v. Mackonochie*, (y)

*Sumner v. Wix*.  
Lights on a re-  
table or super-  
altar.

In *Sumner v. Wix*, (z) the lights complained of were burnt during the celebration of the Holy Communion, not upon the Holy Table or the High Altar, but upon a retable in the rear of the Holy Table. The attempt was made to show that the Privy Council in *Martin v. Mackonochie* (a) had dealt with the two candles *viewed as ornaments, and upon the Communion Table only*; but the Dean of Arches held that this was not the true construction of that judgment; that it had treated the two lighted candles as ceremonies; that in the present case, the lighting and burning, in the manner and under the circumstances proved, fell under the category of ceremonies, and were unlawful.

Lights during  
the Gospel.

In this case there was another charge, that the defendant "caused or permitted two lighted candles to be held—one on each side of the priest—when reading the Gospel, such lighted candles not being then required for the purpose of giving light." This was also adjudged unlawful.

Incense.

*Incense*. This may be introduced in two distinct manners, either actively, in the censuring of persons or things, or passively, by merely burning the material. The former proceeding was admitted by Mr. Mackonochie, (b) and was expressly decided in *Elphinstone v. Purchas*, (c) to be illegal. As to the latter point, in *Martin v. Mackonochie*, (d) the defendant admitted "that he has in his said church, to wit, on Sunday, the 13th day of January, A.D. 1867, caused and allowed incense to be burnt during the reading of the Prayer of Consecration, and afterwards until the time for the administration of the Communion to the people, and permitted and sanctioned such use of incense; but that he denies that he used the same unlawfully, or that such use is unlawful."

(y) L. R. 2 P. C. 365.

(a) *Ubi supra*.

(c) L. R. 3 Adm. & Eccl. 99.

(z) L. R. 3 Adm. & Eccl. 58.

(b) See L. R. 2 Adm. & Eccl. 212.

(d) L. R. 2 Adm. & Eccl. 212.

Sir Robert Phillimore said : “ It is not, however, necessarily subsidiary to the celebration of the Holy Communion, and it is not to be found in the rubrics of the present prayer book, which describe with considerable minuteness every outward act which is to be done at that time. To bring in incense at the beginning or during the celebration, and remove it at the close of the celebration of the Eucharist, appears to me a distinct ceremony, additional and not even indirectly incident to the ceremonies ordered by the Book of Common Prayer. Although, therefore, it be an ancient, innocent, and pleasing custom, I am constrained to pronounce that the use of it by Mr. Mackonochie, in the manner specified in both charges, is illegal, and must be discontinued.”

#### ELEVATION OF THE ELEMENTS.

The elevation of the paten and the cup constituted portions of the complaints in each of the two suits of *Martin v. Mackonochie* and *Flamank v. Simpson*. (e) The precise charges in the former suit were : (f) “ That the said Alexander Heriot Mackonochie has in his said church, and within two years last past, during the Prayer of Consecration, in the order of the administration of the Holy Communion, elevated the paten above his head, and permitted and sanctioned such elevation, and taken into his hands the cup, and elevated it above his head during the Prayer of Consecration aforesaid, and permitted and sanctioned the cup to be so taken and elevated, and knelt and prostrated himself before the consecrated elements during the Prayer of Consecration, and permitted and sanctioned such kneeling and prostrating by other clerks in holy orders.” Mr. Mackonochie, before the suit was commenced, discontinued the practice after confer-

Elevation of  
paten and cup.

(e) Reported together L. R. 2 Adm. & Eccl. 116, 118, 210, 211. See also *Elphinstone v. Purchas*, L. R. 3 Adm. & Eccl. 66, 100.

(f) L. R. 2 Adm. & Eccl. 118.

ence with his diocesan. Mr. Simpson, however, continued it; and, according to his answer, his exact proceedings in this respect were these,—In the reading of the Prayer of Consecration, he raised the paten with both hands over his head on pronouncing the words, “Do this in remembrance of me;” and he similarly raised the cup on pronouncing the words, “This is my blood of the New Testament which is shed for you and for many, for the remission of sins.” The Dean of Arches decided that these practices were unlawful, and he therefore admonished Mr. Mackonochie not to recur to them, and Mr. Simpson to discontinue them. He referred to the authorities and to the enactment in the 28th article: “The sacrament of the Lord’s Supper was not by Christ’s ordinance reserved, carried about, lifted up, or worshipped;” and he said: (g) “It is true that these words contain a declaration only, and no specific order; but looking to the spirit as well as to the letter of our present Prayer Book, as well as to this article, and to the documents which illustrate the early period of the Reformation, it appears to me clear, that those who guided the Church of England through this process of restoration to primitive antiquity, were of opinion that the elevation was so connected with the repudiated doctrine of transubstantiation, as distinguished from the real presence, that it ought not to be suffered to remain.”

The monition  
in *Martin v.*  
*Mackonochie*,  
against elevat-  
ing the ele-  
ments.

Later on in this same cause of *Martin v. Mackonochie*, (h) an application was made to the Privy Council to enforce the monition, “not to elevate the cup and paten,” which had been issued against the defendant. From the affidavits, it appeared that the ordinary course pursued in the administration of the Holy Communion in the respondent’s church was for the officiating clergyman, on reaching the words of institution in the Prayer of Consecration, to drop his voice so as to be nearly inaudible; that he then elevated, not the paten, but a large wafer bread, and replacing it upon the Communion Table, bowed his head down

(g) L. R. 2 Adm. & Eccl. 207.

(h) L. R. 3 P. C. 409.



towards the Table, and remained some seconds in that position ; and he then elevated the cup so that the rim was some inches above his head, and, replacing it on the Table, bowed as before, after which the administration of the elements commenced. It was held by the Judicial Committee that such elevation of the wafer was equivalent to an elevation of the paten, the elevation which is unlawful being that of the consecrated bread itself, and not the paten in which it is placed.

On account of the restricted language in which the articles in this cause as amended were expressed, the monition issued actually and in intendment, though not verbally, directed Mr. Mackonochie “to abstain for the future from the elevation of the cup and paten *above his head during the prayer of consecration.*” Consequently, in the subsequent proceedings before the Privy Council, what their lordships had to consider was whether the monition thus worded had been infringed or not ; but they considered it “most desirable that it should be distinctly understood that they gave no sanction whatever to a notion that any elevation whatever of the elements, as distinguished from the mere act of removing them from the table, and taking them into the hand of the minister, is sanctioned by law. It is not necessary for their lordships to say more (but most undoubtedly less we cannot say) than that we feel nothing has taken place in the course of this cause that can possibly justify a conclusion that any elevation whatever, as distinguished from the raising from the table, is proper or is sanctioned.”

Judgment of the  
Privy Council  
as to elevation  
of the elements.

And subsequently, in reference to this same question, they said :—“The article [*i.e.* charging the elevation], as it was reformed, charged Mr. Mackonochie with having elevated the paten and the cup above his head during the Prayer of Consecration. It was quite unnecessary to charge an elevation of the paten and the cup to the extent described in the reformed article, because the 28th of the Articles of Religion prohibits all elevation of the elements, declaring that ‘the sacrament of the

Lord's Supper was not by Christ's ordinance reserved, carried about, lifted up, or worshipped.' So the elevation of the paten and cup need not have been charged to have taken place during the Prayer of Consecration. It would have been sufficient to have stated it to have occurred during the administration of the Holy Communion. But the charge having been thus precisely framed (however unnecessarily), the specific offence to be proved against Mr. Mackonochie was not simply an elevation of the cup and paten, but an elevation of them above his head at the particular period of the administration, when the Prayer of Consecration was being read. . . . Their lordships were therefore compelled, upon the evidence produced upon the former application against Mr. Mackonochie, to come to the conclusion that he had not disobeyed the monition in this respect," but they took care "to have it distinctly understood, that they gave no sanction whatever to a notion that any elevation of the elements, as distinguished from the mere act of removing them from the table, and taking them into the hand of the minister, was sanctioned by law."

The mixed chalice illegal at whatever period the water is added.

Another well-known debated point, in connection with the Communion Service, is the mixed chalice. In *Elphinstone v. Purchas*, (i) Sir Robert Phillimore held that it was illegal to mix water with the wine at the time of the service of the Holy Communion, but that water may be mixed with the wine, provided the mingling be not made at the time of celebration, and that the wine and water so mixed may be administered to the communicants. On appeal, however, the Privy Council decided that such addition of water, at whatever time done, was a ceremony; (k) and that, not being enjoined by the rubric, it is, in accordance with the general rule as to ceremonies, tacitly forbidden.

(i) L. R. 3 Adm. & Eccl. 66, 102.

(k) Compare *ante*, p. 169, as to acts done not at time of service, being by construction ceremonies.

The question as to wafer-bread may be shortly disposed of. Wafer-bread.  
 The rubric directs the priest to break the bread during the Prayer of Consecration, and "it shall suffice that the bread be such as is usual to be eaten." (l) Sir Robert Phillimore, in *Elphinstone v. Purchas*, (m) decided that the bread may be leavened or unleavened, and that consequently wafer-bread, if broken, is allowable. But upon appeal, the Privy Council held that "the law of the Church has directed the use of pure wheat bread." (n) In coming to this opinion their lordships first commented upon the phrase, "it shall suffice," in the rubric: "It has been argued by some that the phrase, 'it shall suffice,' implies a permission; that the words may mean 'it shall be sufficient, but another usage is allowed, and might even be better.' On the other hand, it has been argued that in other places in the Liturgy, 'it shall suffice' must be construed into a positive direction; that if 'it shall suffice' to pour water on a sickly child, this ought to restrain the clergyman from immersing a child known to be sickly; that even the weaker form 'it may suffice' in the rubric, as to children and infants brought to be baptized, conveys to the minister a distinct direction as to what he is to do, and leaves no alternative course apparent; that 'it shall suffice that the Litany be once read' for both deacons and priests is meant to be, and is received as, a positive order; and that in such cases 'it shall suffice' means 'it shall be sufficient for the completeness of a sacrament or for the observance by the minister of the rubric.' Their lordships are disposed to construe this phrase in each case according to the context. Here the expression is, 'to take away all occasion of dissension and superstition . . . it shall suffice.' If these words left the whole matter open, and only provided that the

(l) Compare the rubric in the First Prayer Book, *ante*, p. 129, and see the directions towards the end of Elizabeth's Injunctions.

(m) L. R. 3 Adm. & Eccl. 66, 102-5.

(n) *Hebbert v. Purchas*, L. R. 3 P. C. 656.

usual bread should be sufficient where it happened to be used, it is difficult to see how either dissension or superstition would be taken away : not dissension, for there would be a licence that had not existed since the Reformation ; nor superstition, for the old wafer with its 'print,' its 'figures,' which the First Book of Edward and the Injunctions desired might be excluded, might now be used if this rubric were the only restraint. Their lordships are therefore inclined to think, on this ground alone, that the rubric contains a positive direction to employ, at the Holy Communion, the usual bread."

Visitation  
Articles from  
temp. Car. II.  
relating to the  
bread.

Their lordships then examined the custom that had prevailed as to the bread during the reigns of Elizabeth and the Stuarts. They said : " From a large collection of Visitation Articles, from the time of Charles II., it is clear that the best and purest wheat bread was to be provided for the Holy Communion, and no other kind of bread. Their lordships believe that from that time till about 1840 the practice of using the usual wheat bread was universal.

Only wheaten  
bread to be  
used.

" The words of the 20th Canon, to which the Visitation Articles refer, point the same way. The churchwardens are bound to supply 'wheaten bread,' and this alone is mentioned."

#### POSITION OF THE MINISTER DURING THE COMMUNION SERVICE.

Position of mi-  
nister during  
the Lord's  
Prayer.

The chief matter now remaining for consideration here is the position of the minister while performing any portion of the Communion Service.

He is to stand.

Here the first point requiring consideration is as to the exact meaning of the rubric which says that the Lord's Prayer and the Collect with which the Service commences are to be said by the priest "*standing* at the *north* side of the table," taken in connection with the directions immediately following. The Privy Council have laid down, that as no further direction is given as to the posture of the priest, while there is such as to that of the



people, he (the priest) is to remain standing during the Ten Commandments, the Collects, the Epistle and Gospel, and the Creed, which come in succession. (o)

As to the locality of the priest, the rubric says "north" side of the table. In *Elphinstone v. Purchas*, (p) Article 18 charged that the respondent read "the collects next before the Epistle for the day in the Communion Service, standing in front of the middle of the Holy Table, with his back to the people; and that on a certain other occasion . . . read such collects standing with his back to the people." The Dean of Arches said: "I am aware that learned persons hold that these words, 'the north side,' mean 'the north side of the Table's front,' and possibly they do so; but, in the absence of any argument before me to this effect, I think I must take the *primâ facie* meaning of the rubric, and consider it as the north side of the whole Table."

Meaning of the term "north."

Article 19 in the same cause contained the two charges,—that Mr. Purchas, first, "while reading the collects following the Creed, stood in front of the middle of the Holy Table, at the foot of the steps leading up to the same, with his back to the people;" and, secondly, "directed, sanctioned, or permitted the Epistle in the Communion Service to be read in his presence by a minister standing with his back to the people."

As to this the learned Dean said: "The first offence appears to me plainly contrary to the rubric; and the second, though perhaps not governed by any positive order in a rubric, is obviously contrary to the intent of the Prayer Book, the Epistle not being a prayer addressed to God, but a portion of the Scripture read to the people."

The second point is the posture of the priest during the Prayer of Consecration. The rubric is: "When the priest standing before the Table hath so ordered the bread and wine, that he may with the more readiness and decency break the bread before the people, and take the cup into his hands, he shall say the Prayer of Consecration."

Posture during Prayer of Consecration.

The Privy Council in *Martin v. Mackonochie* (q) decided "that the words 'standing before the Table' apply to the whole sentence; and they think this is made more apparent by the consideration that acts are to be done by the priest before the people as the prayer proceeds (such as taking the paten and chalice into his hands, breaking the bread, and laying his hand on the various vessels), which could only be done in the act of standing."

Position at  
Table during  
this prayer.

The third and most difficult question, is the position of the priest during this prayer. In determining this, the rubric last cited has to be read with the one in the earlier part of the service, that the priest shall stand on the "north side of the table."

Here again several points arise. First, must the proceedings of the priest be visible to the people? Sir Robert Phillimore, in *Elphinstone v. Purchas*, (r) observed, "That the rubric does not require that the people should see the breaking of the bread or the taking of the cup into the priest's hands." But on appeal to the Privy Council, (s) their lordships were "of opinion that those words mean that the priest is so to stand that the people present may see him break the bread and take the cup into his hands; although the learned judge is right if he means to say that the mere words do not speak of seeing."

Privy Council  
in *Hebbert v.*  
*Purchas*.

The other points requiring consideration cannot be more clearly stated or examined than in the language employed by the Privy Council in this cause: "What is meant by 'the north side of the Table'? What change, if any, is ordered by the rubric before the Prayer of Consecration, and what is the meaning of 'before the people' in that rubric?"

The "north"  
side of the  
Table.

"As to the first question, their lordships are of opinion that the north side of the Table means that side which looks towards the north. They have considered some ingenious arguments, intended to prove that north side means that part of the west side that is nearest to the north. One of these is, that the middle of the altar before the Reformation was occupied by a

(q) L. R. 2 P. C. 382.

(r) L. R. 3 Adm. & Eccl. 66, 109.

(s) *Hebbert v. Purchas*, L. R. 3 P. C. 657.

stone or slab, called *mensa consecratoria* and *sigillum altaris*; that the part of the altar north of this was called north side, and that to the south of it was called the south side. Without inquiring whether English altars were generally so constructed—which is to say the least doubtful—their lordships observe, that in the directions for the substitution of a movable table for the altar, and for its decent covering, and its position at various times, there is no hint that this is to revive the peculiarity of the altar which it replaced, and they do not believe that the Table was so arranged or divided.

“Another argument is drawn from the Jewish ritual. On offering sacrifices before the Lord, the altar was to be sprinkled with the blood, and a red line was drawn across the altar to mark the height at which it should be sprinkled; and it is argued that the line being only in front, the priest must have stood in front, in order to see it and be guided by it. But, on the other hand, the line probably went all round the altar, and the sprinkling was applied to all sides; and even if the fact was rightly stated, it would be impossible to allow an argument so remote and shadowy to supersede the plain sense of a direction so clear in itself. When the Table was placed in the body of the church or the chancel, the priest or minister was to stand on the north side of it looking to the south.

“When it became the custom to place the Table altarwise against the east wall, the rubric remained the same. And there are many authorities to show that the position of minister was still upon the north side or end facing south. It is only necessary to cite a few. Archdeacon Pory (1662), in his Visitation Articles, says: ‘The minister standing as he is appointed, at the north side or end of the Table, when he celebrates the Holy Communion.’ In the dispute between the Vicar of Grantham and his parishioners (1627), Bishop William plainly shows, that whichever way the Table was to stand (which was the matter in dispute), the position of the minister was on the north. ‘If you mean by altarwise that the Table shall stand along close by the



wall, so that you be forced to officiate at one end thereof (as you may have observed in great men's chapels), I do not believe that ever the Communion Tables were otherwise than by casualty so placed in country churches.' He also says: 'I conceive the alteration was made in the rubric to show which way the celebrant was to face;' Heylin, 'Coale from the Altar,' and William's 'Holy Table.' Heylin says, quoting the Latin Prayer Book of 1560: 'I presume that no man of reason can deny but that the northern end or side, call it which you will, is pars septentrionalis, the northern part.' (t) When Bishop Wren was impeached in the House of Lords (A.D. 1636) for consecrating the elements on the west side of the Table, he answered, 'That he stood on the north side at all the rest of the service, except at the Prayer of Consecration. He humbly conceiveth it is a plain demonstration that he came to the west side only for the more conveniency of executing his office, and no way at all in any superstition, much less in any imitation of the Romish priests, for they place themselves there at all the service before and at all after with no less strictness than at the time of consecrating the bread and wine.' Nicholl's 'Commentary on Common Prayer,' (u) Bennett's 'Annotations on Book of Common Prayer' (1708), and Wheatly's 'Rational Illustrations of Common Prayer' (1710), confirm the view that when the Table was placed east and west, the minister's position was still on the north.

The minister  
must stand at  
the north end.

"Their lordships entertain no doubt whatever, that when the Table was set at the east end, the direction to stand at the north side was understood to apply to the north end,—and this was the practice of the Church.

Meaning of  
"before the  
people."

"It will be convenient to consider next what is the meaning of the words 'before the people' in the rubric before the Consecration Prayer. Nicholl (v) observes: 'To say the Consecration Prayer, in the recital of which the bread is broken standing before the Table, is not to break the bread before the people, for then the people cannot have a view thereof, which our wise

(t) "Coale from the Altar." (u) Published 1710. (v) *Op. cit.*



Reformers, upon very good reasoning, ordered that they should.' That stress was laid on this witness of the people of the act of breaking appears by other passages : for example, Udall says : 'We press the action of breaking the bread against the Papists. To what end, if not that the beholders might thereby be led unto the breaking of the Body of Christ ;' 'Communion Comeliness,' 1641. Wheatly(*x*) says : 'Whilst the priest is ordering the bread and wine, he is to stand before the Table, but when he says the Prayer, he is to stand so that he may with more readiness and decency break the bread before the people, which must be on the north side ; for if he stood before the Table, his body would hinder the people from seeing, so that he must not stand there,—and consequently he must stand on the north side, there being in our present rubric no other place for the performance of any part of this office.'

"Their lordships consider that the respondent in standing with his back to the people disobeyed the rubric, in preventing the people from seeing the breaking of the bread. The north side being the proper place for the minister throughout the Communion office, and also while he is saying the Prayer of Consecration, the question remains, whether the words 'standing before the Table' direct any temporary change of position in the minister before saying the Prayer of Consecration. This is not the most important, but it is the most difficult question. One opinion is that of Wheatly, who interprets the rubric as sending the priest to the west side of the Table to order the elements, and recalling him for the Prayer itself. This, however, would be needless if the elements were so placed on the Table as that the priest could with readiness and decency order them from the north side, as is often done.

The minister may not stand with his back to the people.

"It would also be needless in any case where the Communion Table was placed in the body of the church, or in the chancel, with its ends east and west ; and though this position is not likely to be now adopted, the question is, whether that was the

law at the time this rubric was drawn. Now, the rubric prescribes that the Table shall stand in the body of the church, in the chancel, where Morning and Evening Prayers are appointed to be said; and there are two cases which occurred in 1633,—those of Crayford (*y*) and St. Gregory's, London, (*z*)—which show that the Table, though placed at the east end, might be moved for convenience sake, and under competent authority. This, too, is the view of Bishop Wren in 1636: (*a*) ‘That the Communion Table in every church do always stand close under the east wall of the chancel, the ends thereof north and south, unless the ordinary give particular directions otherwise.’ Should the Table be placed with its ends east and west, it would be absurd to enforce a rule that the priest should go to the west end to order the elements, seeing the north side would be in every way more convenient.

The Rubric forbids a change of position, but requires a change of posture.

“Upon these facts their lordships incline to think that the rubric was purposely framed so as not to direct or insist on a change of position in the minister which might be needless, though it does direct a change of posture from kneeling to standing. The words are intended to set the minister free for the moment from the general direction to stand at the north side for the special purpose of ordering the elements; but whether, for this purpose, he would have to change the side or not is not determined, as it would depend upon the position of the Table in the church or chancel, and on the position in which the elements were placed on the Table at first. They think that the main object of this part of the rubric is the ordering of the elements, and that the words, ‘before the Table,’ do not necessarily mean between the Table and the people, and are not intended to limit to any side. The learned judge in the court below, in considering the charge against the respondent—that he stood with his back to the people during the Prayer of Consecration—briefly observes, ‘The question appears to me to have

(*y*) Cardwell, Doc. Am. vol. ii. 226.

(*z*) *Ibid.* ii. 237.

(*a*) *Ibid.* ii. 252.

been settled by the Privy Council in the case of *Martin v. Mackonochie*.' The question before their lordships in that case was as to the posture, and not as to the position of the minister. The words of the judgment are: 'Their lordships entertain no doubt on the construction of this rubric [before the Prayer of Consecration], that the priest is intended to continue in one posture during the prayer, and not to change from standing to kneeling, or *vice versâ*, and it appears to them equally certain that the priest is intended to stand and not to kneel. They think that the words "standing before the Table" apply to the whole sentence; and they think this is made more apparent by the consideration that acts are to be done by the priest before the people as the prayer proceeds (such as taking the paten and chalice into his hands, breaking the bread, and laying his hands on the various vessels), which could only be done in the attitude of standing.' This passage refers to posture or attitude from beginning to end, and not to position with reference to the sides of the Table. And it could not be construed to justify Mr. Purchas in standing with his back to the people, unless a material addition were made to it. The learned judge reads it as if it ran, 'They think that the words "standing before the Table" apply to the whole sentence, and that "before the Table" means between the Table and the people on the west side.' But these last words are mere assumption. The question of position was not before their lordships, and if it had been, no doubt the passage would have been conceived differently, and the question of position expressly settled. Upon the whole, then, their lordships think that the words of Archdeacon (afterwards Bishop) Cosin, A. D. 1687, express the state of the law: 'Doth he [the minister] stand at the north side of the Table, and perform all things there, but when he hath special cause to remove from it, as in reading and preaching upon the Gospel, or in delivering the Sacrament to the communicants, or other occasions of the like nature:' Bishop Cosin's 'Correspondent,' part I, p. 106, Surtees Soc. Pub. They think that the Prayer of Consecration



is to be used at the north side of the Table so that the minister looks south, whether a broader or a narrower side of the Table be towards the north. It is mentioned that Mr. Purchas's Chapel does not stand in the usual position, and that, in fact, he occupied the east side when he stood with his back towards the people. If it had happened, as it does in one of the Chapels Royal, that the north side had been where the west side usually is, a question between the letter and the spirit of the rubrics would have arisen. But the respondent seems to us to have departed both from the letter and the spirit of the rubrics, and our advice to Her Majesty will be that a monition should issue to him as to this charge also."

Less important  
illegal ceremonies.

In addition to the matters already noticed at length, other less important proceedings of a ceremonial nature were, in the *Purchas Case*, decisively condemned. It will suffice merely to mention them. They were—

Use of sacring  
bells.

1. The ringing "a small bell at divers times during the Prayer of Consecration." (*b*)

Agnus Dei.

2. The "saying or singing before the reception of the elements, and immediately after the Prayer of Consecration, the words or hymn or prayer commonly known as the Agnus Dei." (*c*)

Interpolation of  
prayer for the  
dead.

3. The interpolation between the Collect for the Queen and the Epistle of a prayer for a deceased person. (*d*)

Admitting  
acolytes.

4. "The making, receiving, or admission of a new acolyte or choir boy immediately before the commencement of Evening Prayer, and in the presence of the congregation then assembled to hear Divine Service." (*e*)

Elevation of the  
offertory alms.

5. The elevation of the alms contributed at the offertory, and the placing them on the credence table instead of allowing them to remain on the holy table. (*f*)

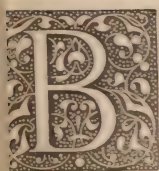
(*b*) L. R. 3 Adm. & Eccl. 98. (*c*) *Ibid.* (*d*) *Ibid.* (*e*) *Ibid.*

(*f*) *Ibid.* 100. See also *Flamank v. Simpson*, L. R. 2 Adm. & Eccl. 116, 218, where the defendant admitted that he "placed the alms and the basin containing them on a stool used as a credence table, but he denied that he did so otherwise than to obtain more room upon the Holy Communion Table"; and this was adjudged to be an offence.



CHAPTER VI.

SUBSIDIARY MATTERS IN THE NATURE  
OF CEREMONIES.



ESIDES the acts and proceedings which are Optional usages. included under the term Ceremonies, as employed in the Prayer Book, whose legality or not therefore depends entirely upon the provisions of the rubrics in that behalf; other matters there are which very closely resemble ceremonies, and which, in ordinary conversation, would be so designated, but whose employment, nevertheless, is entirely optional. "In the same spirit, usages not prescribed by the Prayer Book during the Service have been allowed,—such as turning to the east while the creeds are read; the 'Glory be to Thee, O Lord,' before the reading of the Gospel, and the expression of thanks after the reading of it; the use of hymns—a use, perhaps, not only not ordered, but contrary to the order of the Prayer Book; and an inscription on a tombstone, of 'pray for the soul' of a departed person, has been expressly judicial decision pronounced not to be contrary to the articles, canons, constitutions, doctrine, and discipline of the church." (b)

Turning to the east at creeds, &c.

The great difficulty lies in determining what usages are thus optional. Now here, by way of abundant caution, it must be What are optional.

(b) Per Sir Robert Phillimore, L. R. 2 Adm. & Eccl. 201, referring to *Weeks v. Woolfrey*, 1 Curt. 880.

reiterated "that it is not open to a minister of the Church, even to their lordships in advising Her Majesty, as the highest ecclesiastical tribunal of appeal, to draw a distinction in actions which are a departure from or violation of the rubric, between those which are important and those which appear to be trivial." (c) If certain proceedings are of a ceremonial nature they must fall within the rule of *Westerton v. Liddell*; (d) and if so, no matter how trivial or insignificant they may be, the legality will be determined exclusively by their conformity with the rubrics, or the contrary—"no omission and no addition can be permitted."

Where discretion given by rubrics to ministers.

This being premised: first, whenever the rubrics give a discretion to the minister in matters of liturgy or ceremonial, it follows *ex necessitate rei* that the non-observance of such cannot constitute an offence. The chief instances of such discretion have already been enumerated. (e)

Singing and choral services.

Secondly, singing and, within certain limits, music and choral services, are also, as have been seen, (f) in the discretion of the minister, subject to the supervision of the minister.

Hymns.

Thirdly, as to hymns. Sir Robert Phillimore has said that their use is "perhaps not only not ordered, but contrary to the order of the Prayer Book;" (g) but he added, that by long usage such a practice has become allowable. The latter portion of his statement is, perhaps, scarcely correct, if intended to refer to the use of hymns at any period of the services other than those where an anthem or optional singing is permitted. It can scarcely be legal to commence the Service, as is sometimes done with a hymn or psalm. One of these periods is after the collect "for Grace," where the rubric expressly says, "Here followeth the Anthem." In reference to this anthem it has been well observed, "that since it has become a custom in a great many

(c) L. R. 2 P. C. 382.

(d) *Ante*, pp. 165-9.

(e) See *ante*, pp. 36-8.

(f) See *ante*, pp. 38-42.

(g) L. R. 2 Adm. & Eccl. 201.

churches to sing a psalm in metre in the middle of the Service, it seems more proper to sing it here than just after the Second Lesson, where a hymn is purposely provided by the Church to follow it. The singing the hymn itself in metre is irregular, and to sing a different psalm between the lesson and psalm appointed, is no less irregular. And therefore this must be the most proper place for singing (if there must be singing before the Service is ended), since it seems more timely and conformable to the rubric." (*h*)

(*h*) Wheatly "On the Common Prayer," 157.



## CHAPTER VII.

## VESTMENTS.

SECTION I.—*Explication of Terms.*

The Albe.



THE following are descriptions of the chief Vestments employed in Divine Worship:—

The Albe was a long white tunic of fine linen with tight sleeves (*en gigot*). It was not open in front like a surplice, but was passed over the head and shoulders and girded round the loins. Sometimes it had a richly-embroidered collar and cuffs, and also an oblong piece of embroidery upon its lower extremity in front in which case it was termed “Alba Parata” (an apparelled albe), and these ornamental additions were termed by our ancestors appavelles. On great festivals in the Romish Church albes are sometimes used formed almost entirely of point lace.

The Girdle.

The Girdle was composed of fine flax plaited and tasselled. A Bishop's girdle was gradually enlarged towards the ends presenting an embroidered flat surface, and this ornamental addition was termed *succingulum*.

The Amess.

The Amess or Amice was composed of fine white linen, and might be used to cover the head and shoulders, as represented on the Percy tomb in Beverly Minster, but it was generally rolled back, so as to be only slightly visible under the chiro-



It was crossed over the breast of the albe, and fastened with two strings to the girdle.

The Stole (called in Latin orarium and stola) was a long narrow vestment, often richly embroidered, and in shape like the scarf worn in our Reformed Church. A deacon wore the stole over his left shoulder, thence passed across the breast and back and tied with tassels under his right arm, while in the case of priests, bishops, or archbishops it was crossed over the breast and hung down in front. The Stole.

The Encolpium or pectoral cross, which was of gold and often richly gemmed, hung over the breast of the albe under the vestments hereafter to be described. The Encolpium.

The Maniple (sudarium) was an oblong piece of embroidered silk or velvet, like a miniature stole. It was folded double, passed over the left wrist, and hung down. The Maniple.

The Tunic (or subtile), the distinctive vestment of a subdeacon, was cut at each side about half way to the arm, bordered and fringed. It had two narrow stripes of some rich material in its length and a sort of square capucium at the back. Its narrow straight sleeves terminated a little above the elbow. The Tunic.

The Dalmatica (or deacon's vestment) was almost exactly similar to the tunic, with the exception of its very full sleeves. A representation of St. Lawrence in the National Gallery clearly exhibits the ancient form of this vestment; and in the illuminated MS. of Froissart (in the British Museum) bishops vested in the wide-sleeved dalmatica may be seen assisting at the coronation of Pope Boniface, and also at the coronation of King Henry IV. In more modern times the sleeve has been reduced to a sort of epaulette falling about half way down to the elbow. The Dalmatica.

The Chasuble (casula) in its ancient form if laid flat upon the ground would have appeared like an oval more or less pointed, with a hole in the centre where the longer and shorter diameters intersect. Through this aperture the head of the officiant was passed. It fell down before and behind about as low as the The Chasuble.

knees, sloping off to a point, and covered the arms about as low as the elbows. In modern times it is rounded before and behind, and cut to the shoulder so as to give full play to the arms. This was the principal vestment worn by a priest when he celebrated mass. It had always a rich border, sometimes also a collar. There was a broad stripe in front and a Latin cross on the back, extending throughout its whole length and breadth, each being of the same embroidered pattern or rich material, and, like all the other vestments mentioned, it was not unfrequently powdered with flowers of gold.

## SECTION II.—*History of Vestments.*

HE legislation, whether by Parliament or by Convocation, upon the subject of vestments, has been most unsystematic and tentative. Statutes have been passed and canons framed abrogating former provisions and again reviving, more often by implication than expressly, other repealed enactments, without regard to the effect which the revived provisions might have upon existing laws. In consequence, difficulties have been created which the skill and acumen of even the Privy Council have not satisfactorily resolved. This has especially been the case with the question of Vestments.

The rubrics of the First Prayer Book of Edward VI. upon this point are as follows :—

“ Upon this day, and at the time appointed for the ministration of the Holy Communion, the Priest that shall execute the Holy ministry, shall put upon him the vesture appointed for that ministration, that is to say a white Albe plain, with a Vestment or Cope. And where there may be many Priests or Deacons, there so many shall be ready to help the priest, in the ministration, as shall be requisite ; and shall have upon

them likewise the vestures appointed for their ministry, that is to say, Albes with Tunicles."

The Second Prayer Book of Edward VI. altered this, and in particular with regard to the Communion directed that "the Minister shall use neither Albe, Vestment, nor Cope; but being Archbishop or Bishop, he shall have and wear a Rochet, and being a Priest or Deacon, he shall have and wear a Surplice only."

Second Prayer  
Book of Ed-  
ward VI.

Next, in 1559, came Elizabeth's Prayer Book, the Ornaments rubric of which provided that "the Minister at the time of the Communion and at all other times of his ministration shall use such ornaments in the Church as were in use by authority of Parliament in the second year of the Reign of King Edward VI. according to the Act of Parliament set in the beginning of this Book."

Elizabeth's  
Prayer Book.

In the same year was passed the Act of Uniformity, 1 Eliz. c. 2, the 25th section of which enacts, "That such Ornaments of the Church, and of the Ministers thereof, shall be retained and be in Use, as was in the Church of England, by authority of Parliament in the Second Year of the Reign of King Edward the Sixth, until other Order shall be therein taken by the Authority of the Queen's Majesty, with the advice of the Commissioners appointed and authorized under the Great Seal of England for Causes Ecclesiastical or of the Metropolitan of this Realm."

Act of Uniformity of 1559,  
c. 2, s. 25.

Now it was decided in *Westerton v. Liddell*<sup>(i)</sup> that the words "by authority of Parliament in the second year of the reign of King Edward the Sixth," in the rubric to Elizabeth's Prayer Book refer to the First Prayer Book of Edward VI. Consequently this rubric, read with the above section of the Act of Uniformity, restored for the time the vestments which the Second Prayer Book of Edward VI. had rendered illegal. There are, however, in connection with this two considerations which must not be overlooked. First, the change in all pro-

Decision in  
*Westerton v.*  
*Liddell.*

(i) Moore, Special Report, p. 160.

bability was done advisedly, partly, it may be, from a dislike to work a sudden revolution in ceremonial and dress, and partly perhaps because the intention was to make the use of the revived vestments optional, not compulsory, and to leave to the Queen, "with the advice of the Commissioners," the final settlement of these matters. Secondly, the adoption of the Second Prayer Book of Edward VI. in lieu caused a great alteration in many parts of the Service, more especially in the Communion Service, and consequently it deprived the vestments in question of much of their primary significance.

Injunctions of  
Elizabeth.

Concurrently with the Act of Uniformity were promulgated Elizabeth's Injunctions. (*j*) They refer mainly to matters other than apparel, but the 47th directs, "That the churchwardens of every parish shall deliver unto our visitors the inventories of vestments, copes, and other ornaments," &c.

Elizabeth's  
Commission of  
1559.

The same year 1559, Elizabeth, in virtue of the above proviso in the Act of Uniformity, commissioned Archbishop Parker, the Bishop of London, Dr. Bill, and Dr. Haddon to inquire into and reform the disorders in chancels. These commissioners immediately began to put the Injunctions in force. According to a return made by them, which is in the Record Office, they appear to have chiefly occupied themselves in taking inventories of church ornaments and of the service books then in use. (*k*)

Advertisements  
of 1564.

In 1564 were published the "Advertisements, partly for due order in the publique administration of common prayers and using the holy sacraments and partly for the apparell of all persons ecclesiasticall." They are stated to be by "virtue of the Queen's Majesty's letters," but are generally considered to have been issued under the proviso already referred to, (*l*) and they were received and acted upon as authoritative expositions

(*j*) Given *in extenso*, *post*, part iii., chap. iii.

(*k*) Calendar of State Papers (Domestic), 1547—1580, p. 148.

(*l*) They are given at length, *post*, part iii. chap. iii.



of Ecclesiastical Law. These Advertisements deal chiefly with matters of doctrine and church polity. In respect of vestments and apparel they enjoin :—

“That in ministration of the holy communion in the cathedral and collegiate churches the principal minister shall use a cope with gospeller and epistler agreeably, and at all other prayers to be said at the communion table to use no copes, but surplices.

“That the dean and prebendaries wear a surplice with a silk hood in the choir, and when they preach in the cathedral or collegiate church to wear their hood.

“That every minister saying any public prayers or ministering of the sacraments or other rites of the church shall wear a comely surplice with sleeves to be provided at the charge of the parish, and that the parish provide a decent table standing on a frame for the communion table.”

That these Advertisements were acted upon and rigidly enforced is proved by overwhelming evidence. An inventory of the ornaments of 150 parishes in the diocese of Lincoln, A.D. 1565-6, shows that the chasubles and albs were systematically defaced, destroyed, or put to other uses, and a precise account was rendered of the mode of their destruction.<sup>(m)</sup> The Visitation Articles of the time almost invariably make inquiries as to whether the ministers wear surplices to the exclusion of other vestments. Thus, Archbishop Parker in 1569 asks: “Whether your priests, curates, or ministers, do use in the time of the celebration of Divine Service to wear a surplice as prescribed by the Queen’s Majesty’s Injunctions, and the Book of Common Prayer.”

The next stage in the history of the legislation upon this question is the Hampton Court Conference in 1604. Here the Puritans objected to the surplice, and the Privy Council have

Hampton Court  
Conference of  
1604.

(m) See “Inventories of Church Furniture, &c.,” by Edward Peacock, F.A.A.

stated, "There was evidently no other vestment in use to which they could object." (n) The revised Prayer Book, which as one result of this meeting was issued in 1604, contains the Ornaments rubric of Elizabeth's Prayer Book.

Canons of  
1603-4.

Then follow the Canons of 1603-4, which were enacted by both Houses of Convocation and ratified by King James, and which sanction the use of this Prayer Book. (o) Of these Canons those which bear upon the present subject are the following :—

24.—"In all Cathedral and Collegiate Churches the Holy Communion shall be administered upon principal feast days sometimes by the Bishop, if he be present, and sometimes by the Dean and at sometimes by a Canon or Prebendary, the principal Minister using a decent cope and being assisted with the Gospeller and Epistler agreeably according to the Advertisements published Anno 7 Elizabeth. The said Communion to be administered at such times and with such limitations as is specified in the Book of Common Prayer. Provided that no such limitation by any construction shall be allowed of, but that all Deans, Wardens, Masters, or Heads of Cathedral and Collegiate Churches, Prebendaries, Canons, Vicars, Petty Canons, Singingmen, and all others of the foundations shall receive the Communion four times yearly at the least."

25.—"In the time of Divine Service and Prayers in all Cathedral and Collegiate Churches, when there is no Communion, it shall be sufficient to wear surplices, saving that all Deans, Masters, and Heads of Collegiate Churches, Canons and Prebendaries being graduates shall daily at the times both of prayer and Preaching wear with their Surplices such Hoods that are agreeable to their degrees."

58.—"Every Minister saying the Public prayers or ministering the Sacraments or other Rites of the Church shall wear

(n) L. R. 3 P. C. 640.

(o) They are given *in extenso*, *post*, part iii, chap. v.

decent and comely surplice with sleeves, to be provided at the charge of the parish. And if any question arise touching the matter, decency, or comeliness thereof, the same shall be decided by the discretion of the Ordinary. Furthermore such Ministers as are graduates shall wear upon their Surplices at such time such Hoods as by the orders of the Universities are agreeable to their degrees, which no Minister shall wear (being no Graduate) under pain of suspension. Notwithstanding it shall be lawful for such Ministers as are not Graduates to wear upon their Surplices instead some decent tippets of black so it be not silk."

Lastly come the Act of Uniformity of 1662, (*p*) and the Ornaments rubric which is found in the edition of the Prayer Book recognized by it. The rubric is the one now in force, and is in the words: "And here it is to be noted, that such Ornaments of the Church, and of the Ministers at all times of their ministration, shall be retained, and be in use, as were in this Church of England, by the authority of Parliament, in the Second Year of the Reign of King Edward VI."

Act of Uniformity of 1662 and our Prayer Book.

The statute provided in section 2 that the Book joined and annexed to it shall alone be used; and since the Ornaments rubric in this Prayer Book refers back to the second year of Edward VI., that is to his First Prayer Book, the statute did in some way or other and to some degree revive the rubric of this First Prayer Book. The statute however goes on to enact in section 24, that: "The several Laws and Statutes of this realm which have been formerly made, and are now in force for the Uniformity of Prayer and the administration of the Sacraments . . . shall stand in full force and strength, to all intents and purposes whatever, for the establishing and confirming the said Book."

Consequently, the Privy Council decided in *Hebbert v. Purchas*, (*q*) that "the Canons relating to the Vestments of

(*p*) 13 & 14 Car. II. c. 4.

(*q*) L. R. 3 P. C. 605, 647-8.

the Ministers were not repealed by the Act of Uniformity, and that the Canons had the same force after the passing of that Act which they had before."

Decision of the  
Privy Council  
in *Hebbert v.*  
*Purchas*.

The Act of Uniformity, therefore, not repealing the Canons of 1603, must be read as one with them. And their lordships in that case, after examining and rebutting the two opinions, one that the Act of 1662 repealed all legislation on the subject of the ornaments of the minister; the second, that the Act and the Canons set up two distinct standards of ritual on this subject; and the third, that the Act of 1662 is to be read with the Canons of 1602 still in force and harmonized with them, finally determined as follows: "The third opinion remains, that the provisions of the rubric of Edward VI. are continued, so far as they are not contrariant to other provisions still in force. And here it is to be observed again that the Rubric was altered, after refusal to listen to the Puritan objections, to a form different from that of any former Rubric, by introducing the word 'retained.' Both in the statute of Elizabeth and in the rubric in question the word 'retain' seems to mean that things should remain as they were at the time of the enactment. Chasuble, alb, and tunicle had disappeared for more than sixty years; and it has been argued, fairly, that this word would not have force to bring back anything that had disappeared more than a generation ago. To retain means, in common parlance, to continue something now in existence. It is reasonable to presume that the alteration was made not without some purpose; and it appears to their lordships that the words of the rubric strictly construed, would not suffice to revive ornaments which had been lawfully set aside, although they were in use in the second year of Edward VI. But whether this be so or not, their lordships are of opinion, that as the Canons of 1603-4, which in one part seemed to revive the vestments and in another to order the surplice for all ministrations, ought to be construed together, so the Act of Uniformity is to be construed with the two Canons



on this subject, which it did not repeal; and that the result is that the cope is to be worn in ministering the Holy Communion on high feast days in cathedrals and collegiate churches, and the surplice in all other ministrations." (99)

This decision being the latest, must of course, at least for the time, be conclusive as to the construction to be given to this rubric, but it is scarcely reconcilable with the language used by the Privy Council in *Westerton v. Liddell*. Here their lordships said: "The rubric to the Prayer Book of January 1st, 1604, adopts the language of the rubric of Elizabeth; the rubric to the present Prayer Book adopts the language of the statute of Elizabeth; but they all obviously mean the same thing, that the same *dresses* and the same utensils or articles *which were used under the First Prayer Book of Edward VI. may still be used.*" (r)

Decision in *Hebbert v. Purchas* reconcilable with that in *Westerton v. Liddell*.

### SECTION III.—*Vestments for the Holy Communion.*

### SECTION IV.—*Vestments for the other Services.*

S in the chapters upon the Liturgy, Rites and Sacraments, Ceremonial, and Ornamentation, the matters relating to the Holy Communion have been or will be considered separate from those relating to the other services, it is convenient, at least for the sake of symmetry, to indicate in regard to Vestments the same division. But as the law now stands, there is no such distinction under ordinary circumstances and in parish churches, and but little distinction in other cases.

### AT THE COMMUNION.

In *Elphinstone v. Purchas*, (s) Sir Robert Phillimore held that the vestments "for ministers below the order of bishops, and

Vestments of the Holy Communion.

(99) L. R. 3 P. C. 649. (r) Moore's Special Report, p. 157.

(s) L. R. 3 Adm. & Eccl. 66, 94.

when officiating at the Communion Service, are the cope, vestment, or chasuble, surplice, alb (*i.e.* 'white alb plain'), and tunicle;" that other vestments at that Service are not allowable; and that it is unlawful "to wear or authorize to be worn a cope at morning or at evening prayers; albs with patches called apparels; tippets of a circular form; stoles of any kind whatever, whether black, white, or coloured, or worn in any manner; dalmatics, and maniples."

Upon the appeal, however, <sup>(t)</sup> the Privy Council, after a very careful investigation of the various statutory enactments in this behalf, and of their effect upon each other, determined "that the result is that the cope is to be worn in ministering the Holy Communion on high feast days in cathedrals and collegiate churches, and the surplice in all other ministrations."

The only legal vestments are the cope and the surplice.

#### SERVICES OTHER THAN THE COMMUNION.

Vestments of the other services.

The hood.

The decision of the Privy Council has just been stated, that the surplice alone is to be worn.

The Privy Council do not in the passage cited refer to the hood; in other parts of their judgment in this case they mention it, at least in quoting from the judgment rendered in the court below. Possibly therefore, if not probably, the omission in the "acting" part of the judgment was unintentional, and the use of the hood was not declared to be either legal or illegal.

Provisions of Elizabeth's Advertisements;

and of the Ornaments rubric of First Prayer Book.

One of Elizabeth's Advertisements <sup>(u)</sup> directs that the dean and prebendaries wear a surplice with silk hood in the quire, and when they preach in the cathedral or collegiate church wear their hood. So the Ornaments rubrics of the First Prayer Book provide: "In the saying or singing of Matins and Evensong, baptizing and burying, the Minister in parish churches and

<sup>(t)</sup> *Sub nom.* Hebbert v. Purchas, L. R. 3 P. C. 605, 649.

<sup>(u)</sup> See *ante*, p. 211.

chapels annexed to the same shall use a surplice, and in all cathedral churches and colleges, the Archdeacons, Deans, Provosts, Masters, Prebendaries, and Fellows being Graduates, may use in the quire beside their surplices, such hoods as pertaineth to their several degrees which they have taken in any university within this realm; but in all other places every Minister shall be at liberty to use any surplice or no; it is also seemly that Graduates when they do preach, shall use such hoods as pertaineth to their several degrees.

“And whensoever the Bishop shall celebrate the Holy Communion in the church, or execute any other public ministration, he shall have upon him, besides his rochette, a surplice or albe, and a cope or vestment, and also his pastoral staff in his hand, or else borne or holden by his chaplain.”

In reference to this it was decided in the Arches Court in the above cause, that “in all other [*i.e.* than the Communion] services, the surplice only, except that in cathedral churches and colleges, the academical hood may also be worn.” (*w*)

Decision in  
Arches Court  
as to the hood.

As to the black gown there has been no decision, but the *Purchas case* contains a dictum of the Dean of Arches. He said that a certain line of argument “would establish the equality of the use of the black gown which has no warrant of law.” (*x*)

Black gown.

## COMMENTS ON THE DECISIONS AS TO VESTMENTS.

The above, then, being the decision of the highest and final Ecclesiastical tribunal, it is for the time being the law. It cannot, however, be concealed that this decision has been received with very considerable disfavour among a large section both of the clergy and laity, and that the accuracy of the reasoning upon which it proceeds, and by which the above result was arrived at, has been and still is questioned and

(*w*) L. R. 3 Adm. & Eccl. 94.

(*x*) L. R. 3 Adm. & Eccl. 91.

denied by very many. It is also at variance with at least some of the dicta put forth in *Westerton v. Liddell*. (y)

Judgment of  
Bishop of Exeter  
in case of Rev.  
W. Blunt.

As there is such a state of doubt in Ecclesiastical circles reference may be made to the judgment delivered by the Bishop of Exeter in the case of the Rev. Walter Blunt. (z) With respect to vestments, his lordship said: "The rubric at the commencement of 'The Order for Morning and Evening Prayer' says, 'That such ornaments of the church, and of the ministers thereof, at all times of their ministration, shall be retained, and be in use, as were in this Church of England by the authority of parliament, in the second year of the reign of King Edward VI., in other words, 'a white albe plain, with a vestment or cope.'

"These were forbidden in King Edward VI.'s Second Book which ordered that 'The Minister at the time of the Communion, and at all other times in his ministration, shall use neither albe, vestment, nor cope, but being archbishop or bishop, he shall have and wear a rochet; and being a priest or deacon, he shall have and wear a surplice only.'

"This was a triumph of the party most opposed to the Church of Rome, and most anxious to carry reformation to the very farthest point.

"But their triumph was brief. Within a few months [a year after the Book of 1552 had come into use] Queen Mary restored Popery; and when the accession of Queen Elizabeth brought back the Reformation, she, and the Parliament, deliberately rejected the simpler direction of Edward's Second Book, and revived the ornaments of the First. This decision was followed again by the Crown, Convocation, and Parliament, at the restoration of Charles II., when the existing Act of Uniformity established the Book of Common Prayer, with its rubrics, in the form in which they now stand.

(y) As pointed out, *ante*, p. 215.

(z) Reported 2 Stephens' Ecclesiastical Statutes, 2046-2062.



“From this statement it will be seen, that the surplice may be objected to with some reason; but then it must be because the law requires ‘a white albe plain, with a vestment or cope.’

“Why have these been disused? Because the parishioners—that is, the churchwardens, who represent the parishioners—have neglected their duty to provide them; for such is the duty of the parishioners by the plain and express Canon Law of England. (Gibson, 200.) [In the Irish Canons there is no order to provide a dress for the minister.] True, it would be a very costly duty, and for that reason, most probably, churchwardens have neglected it, and archdeacons have connived at the neglect. I have no wish that it should be otherwise. But, be this as it may, if the churchwardens of Helston shall perform this duty, at the charge of the parish, providing an albe, a vestment, and a cope, as they might in strictness be required to do (Gibson, 201), I shall enjoin the minister, be he who he may, to use them. But until these ornaments are provided by the parishioners, it is the duty of the minister to use the garment actually provided by them for him, which is the surplice. The parishioners never provide a gown, nor, if they did, would he have a right to wear it in any part of his ministrations. For the gown is nowhere mentioned or alluded to in any of the rubrics. Neither is it included, as the albe, the cope, and *three* surplices expressly are, among ‘the furniture and ornaments proper for Divine service,’ to be provided by the parishioners of every parish. (Gibson, *ubi supra*.)”

Vestments to  
be provided by  
parishioners.

## CHAPTER VIII.

## ORNAMENTATION.

SECTION I.—*Definition of the Term.*

N respect of this term Ornaments, there is to be found, what so very seldom can be found in the legal system of this country, a direct and exact definition drawn up *ad hoc*, and promulgated *ex cathedrâ* by the ultimate Court of Appeal.

This definition has been approved of and repeated by the Privy Council in *Martin v. Mackenochie*,<sup>(a)</sup> where it is said: "In these conclusions and in this construction of the rubric, their lordships entirely concur." In *Liddell v. Westerton*,<sup>(b)</sup> the Privy Council thus expressed themselves: "Their lordships, after much consideration, are satisfied that the construction of this rubric, which they suggested at the hearing of the case, is its true meaning, and that the word 'ornaments' applies, and in this rubric is confined to those articles, the use of which in the services and ministrations of the Church is prescribed by the Prayer Book of Edward VI.

"The term 'ornaments' in Ecclesiastical Law is not confined, as by modern usage, to articles of decoration or embellishment; but it is used in the larger sense of the word 'ornamentum,' which according to the interpretation of 'For

Definition of  
Ornaments in  
*Liddell v. Westerton*;

(a) L. R. 2 P. C. 365.

(b) Moore, Special Report, pp. 156-7.

cellini's Dictionary,' is used 'pro quocumque apparatu, seu instrumento.' All the several articles used in the performance of the services and rites of the Church are 'ornaments;' vestments, books, clothes, chalices, and patens are amongst church ornaments; a long list of them will be found extracted from Lyndwood, in Dr. Phillimore's edition of 'Burns' Ecclesiastical Law,' vol. i. pp. 375-7. In modern times organs and bells are held to fall under this denomination.

"When reference is had to the First Prayer Book of Edward VI. with this explanation of the term 'ornaments,' no difficulty will be found in discovering amongst the articles, of which the use is there enjoined, ornaments of the church as well as ornaments of the ministers. Besides the vestments differing in the different services, the rubric provides for the use of an English Bible, the new Prayer Book, a poor man's box, a chalice, a corporas, a paten, a bell, and some other things."

In *Martin v. Mackonochie*, (c) their lordships said :

affirmed in  
*Martin v.*  
*Mackonochie* ;

"The construction of this rubric was very fully considered by this committee in the case of *Westerton v. Liddell*, already referred to; and the propositions which their lordships understand to have been established by the judgment in that case may thus be stated :

"First.—The words, 'authority of parliament' in the rubric refer to and mean the Act of Parliament, 2 & 3 Ed. VI. c. 1, giving parliamentary effect to the First Prayer Book of Edward VI., and do not refer to or mean canons or royal injunctions, having the authority of parliament, made at an earlier period.

"Second. The term 'ornaments' in the rubric means those articles, the use of which, in the services and ministrations of the Church, is prescribed by that Prayer Book.

"Third. The term 'ornaments' is confined to these articles.

"Fourth. Though there may be articles not expressly men-

tioned in the rubric, the use of which would not be restrained, they must be articles which are consistent with, and subsidiary to, the services: as an organ for the singing, a credence table from which to take the sacramental bread and wine, cushions, hassocks, &c."

and extended in  
*White v. Bow-*  
*ron*, the Bal-  
dacchino case,  
to fixed articles.

It has since been held that this definition is not limited to movable articles, but includes such as actually are, or are intended to be, fixed. In *White v. Bowron*, the "Baldacchino case," (*d*) the Judge of the Consistory Court of London said: "The fact of its being constructed of a durable material, and of its being immovable, does not deprive it of the character of a church ornament: otherwise it would be in the power of any individual, by making a change in the material, to legalize an article of church furniture which had been excluded when made of different material. An altar or communion table of stone, fixed to the building, would be equally a church ornament as a movable communion table of wood."

## SECTION II.—*History of the Law relating to Ornaments.*

HE provisions relating to Ornaments are to be found chiefly, if not entirely, in the same statutes and other enactments, legal or ecclesiastical, which contain the regulations for Vestments, and in the various Ornaments rubrics. Consequently the broad and general considerations apply equally, and with the same significance, to both matters. Therefore, as the course and general nature of the legislation relating to Vestments has been considered in the first section of the last chapter it will not here be again referred to, except so far as (if at all) the result is different with respect to the two matters; but attention will be directed to the specific provisions and the particular principles which directly and specifically concern Ornaments.

(*d*) L. R. 4 Adm. & Eccl. 207, 219.



At the risk of tautology, it is convenient to repeat here the rubric of Elizabeth's Prayer Book, and the section of the Act of Uniformity, relating to ornaments. The former is in the words, "And here it is to be noted that the minister, at the time of the communion, and at all other times in his ministration, shall use such ornaments in the church as were in use by authority of parliament in the second year of the reign of King Edward the Sixth, according to the Act of Parliament set forth in the beginning of this book." (*e*)

Ornaments rubric of Elizabeth's Prayer Book.

The latter provides, "That such ornaments of the church, and of the ministers thereof, shall be retained and be in use as was in this Church of England, by authority of parliament, in the second year of King Edward VI., until other order shall be herein taken by the authority of the Queen's Majesty, with the advice of Her Commissioners appointed and authorized under the great seal of England, for causes ecclesiastical, or of the metropolitan of this realm." (*f*)

Ornaments section of Act of Uniformity.

Concurrently with this statute appeared, as already mentioned, the Injunctions of Elizabeth. Of these, the more important relating to ornaments are the following:—

"That they shall take away, utterly extinct and destroy all shrines, coverings of shrines, all tables, candlesticks, trindalls, and rolls of wax, pictures, paintings, and all other monuments of feigned miracles, idolatry, and superstition, so that there remain no memory of the same in walls, glass windows, or elsewhere within their churches and houses, preserving, nevertheless, or repairing, both the walls and glass windows; and they shall exhort all their parishioners to do the like within their several houses.

Injunctions of Elizabeth.

"And that the churchwardens, at the common charge of the parishioners in every church, shall provide a comely and honest pulpit, to be set in a convenient place within the same, and be here seemly kept for the preaching of God's Word.

(*e*) As to exact legal import of this, see *ante*, p. 209.

(*f*) 1 Eliz. c. 2, s. 25.

“Also they shall provide, and have within three months after this visitation, a strong chest with a hole in the upper part thereof, to be provided at the cost and charge of the parish having three keys, whereof one shall remain in the custody of the parson, vicar, or curate, and the other two in the custody of the churchwardens or any other two honest men, to be appointed by the parish from year to year, which chest you shall set and fasten in a most convenient place, to the intent the parishioners should put into it their oblations and alms for their poor neighbours.”

Commission on disorder in chancels.

Advertisements of 1564.

The same year was created the Commission to “inquire into and reform the disorders in Chancels.”

In 1564 were issued the “Advertisements.” (*h*) They have reference mainly to other matters than ornaments; but in respect of these they enjoin:—

“That the parish provide a decent table, standing on frame for the communion table.

“Item. That they shall decently cover with carpet, silk, or other decent covering, and with a fair linen cloth (at the time of ministration), the communion table, and to set the ten commandments upon the east wall over the said table.

“Item. That all communicants do receive it and as is appointed by the laws of the realm and the Queen’s Majesty’s Injunctions.

“Item. That the font be not removed, nor that the curate do baptize in any parish churches in any basons.”

Prayer Book and Canons of 1604.

The revised Prayer Book issued in 1604 contained the Ornaments rubric of Elizabeth, as given above, without alteration.

The Canons of 1604, as already shown, (*i*) sanctioned the use of this Book. They contain numerous provisions upon the subject of ornaments, as will be shown in the subsequent section of this chapter.

(*h*) *Post*, part iii. chap. iii.

(*i*) See *ante*, p. 69.

SECTION III.—*Ornamentation which is not specially connected with the Chancel.*

**I**T will be convenient, in dealing with questions coming under this head, to separate, as has in prior chapters been done, those questions which specially and distinctly concern the chancel exclusively from such as affect the sacred building at large. It will also be convenient to attempt to distinguish structural from non-structural ornamentation; but it will not be possible to follow out in all cases this division.

SUB-SECTION I.—*Structural Ornamentation.*

## REPAIRS.

It may be premised with regard to the sacred edifice, that the repair and maintenance of the chancel are at the cost of the incumbent, while the parish are bound to provide for the remainder of the building. This was laid down in unqualified terms in *Veley v. Burder*: (k) “Such then being the law of the land, it follows as a necessary consequence that the repair of the fabric of the church is a duty which the parishioners are compellable to perform, not a mere voluntary act which they may perform or decline at their own discretion;—that the law is imperative upon them absolutely, that they do repair the church, not binding on them in a qualified, limited manner only, that they may repair or not as they think fit; and that where it so happens that the fabric of the church stands in need of repair, the only question upon which the parishioners, when convened together to make a rate, can by law deliberate and determine, is not whether they will repair the church or not—for upon that point they are concluded by the law—but how and in what manner the common law obligation so binding them may be best and most effectually and, at the same time, most conveniently and fairly between themselves performed and carried into effect. The parishioners

Repair of  
the chancel;

of the body of  
the church.

(k) 12 Ad. & Ell. 233, 302.

have no more power to throw off the burthen of the repair of the church than that of the repair of bridges and highways,—the compelling of the performance of the latter obligation belonging exclusively to the temporal courts, whilst that of the former has been exercised usually, though perhaps not necessarily exclusively, by the spiritual courts from time immemorial.”

### SEATS IN THE CHURCH.

Accommodation of laity.

There seems to have been in the middle ages an entire absence in our cathedrals and other ancient ecclesiastical edifices of any fixed and regularly constructed accommodation for the laity as an essential part of the building. Until about the period of the Reformation, no seats were allowed, nor any distinct apartment in the church assigned to distinct inhabitants, except for the lord of the franchise, or some other eminent persons. The general seats that were provided were movable, like those in most Roman Catholic cathedrals of the present day, and were the property of the incumbent, and in all respects at his disposal; and they were frequently bequeathed by the incumbents to their successors or others, as they thought fit.

The wishes of churchmen will be consulted.

It may be observed that with regard to seats, and generally “in matters connected with the comfort and convenience of those who attend the church, the Court [in granting or refusing faculties] is bound to give greater weight to the opinion of the majority of churchmen in the vestry.” (1)

### PULPIT, READING-DESK, AND FONT.

Pulpit;

The 24th of Elizabeth’s Injunctions directed that pulpit should be provided, and this was re-enacted in almost identical language by Canon 83: “The Churchwardens or Questmen at the common charge of the Parishioners in every church, shall provide a comely and decent pulpit, to be set in a convenient place within the same, by the discretion of the ordinary of the

(1) *Vicar of Tottenham v. Venn*, L. R. 4 Adm. & Eccl. 221, 223.



place, if any question do arise, and to be there seemly kept for the preaching of God's Word."

In the construction, or at least in the alteration of a pulpit, the wishes of the parishioners will be consulted; and therefore, where application was made on behalf of the parson for a faculty to change the pulpit from a substantial wood fabric to one of stone, and the grant of the faculty was opposed by a majority of the parishioners, the application was refused. (*m*)

As to the reading-desk, the 82nd Canon directs: "And likewise that a convenient seat be made for the Minister to read Service in." Apparently reading-desks were not in use in the reign of Edward VI., (*n*) but they certainly were so very soon afterwards. In 1569, Parkhurst, Bishop of Norwich, ordered for great churches "a decent and convenient seat in the body of the church, where the minister may sit or stand and say the whole of the divine service, that all the congregation may hear and be edified therewith, and that in smaller churches there be some convenient outside the chancel door." "This," says Dr. Hook, (*o*) "is the first mention that we find made of a reading pew."

By Canon 81 there is to be a font of stone in every church and chapel where baptism is to be administered; the same to be set in the ancient usual places.

## MONUMENTAL ERECTIONS.

These are expressly exempted from the provisions of the Act of 1549, "for the abolishing and putting away of divers books and images." (*p*) This statute directed that all "images of stone, &c., graven, carved, or painted," should be defaced and destroyed; but in section 6, it is "provided always that this Act, or anything therein contained, shall not extend to any image or picture set or graven upon any tomb in any church, chapel, or

(*m*) *Jackson v. Singer & Carson*, 37 L. J. Eccl. 9.

(*n*) See *ante*, pp. 24-6, as to the place of the minister.

(*o*) Ch. Dict. Art. "Pew," 8th Ed. p. 583.

(*p*) 3 & 4 Ed. VI. c. 10; set out *post*, part iii. chap. ii. It was repealed y 1 Mar. sess. 2. c. 2, but was revived by 1 Jac. I. c. 25, s. 48.

churchyard,—only for a monument for any king, prince, nobleman, or other dead person, which hath not been commonly reputed and taken for a saint, but that such pictures and images may stand and continue in like manner and form as if this Act had never been made; anything in this Act to the contrary in any wise notwithstanding.”

Whose permission is required. Faculty also necessary.

Strictly speaking, the permission both of the incumbent and the ordinary is requisite, as well as the grant of a faculty, to legalize the erection or removal of a monument, as of any other dealing with the fabric of a church. In *Beckwith v. Harding*, (q) the Court of Queen’s Bench decided that a custom for the churchwardens to set up monuments in a church, without the consent of either the ordinary or the rector, was illegal; and in *Seager v. Bowle*, (r) the Court of Delegates held that no practice can absolutely legalize the erection of a monument without a faculty.

This rule, however, is not applied with any great harshness. In *Maidman v. Malpas*, (s) Sir W. Scott said: “The permission of the ordinary is necessary before any monument can properly be erected in the church. It is to his care that the fabric of the church is committed, that it should not be injured or deformed by the caprice of individuals. The consent of the incumbent is taken on such occasion, especially of the rector for a monument in the chancel; a faculty is likewise required, though it is frequently omitted under the confidence reposed in the minister, the Ecclesiastical Court not being eager to interpose.”

Consent of incumbent is usually sufficient.

Varieties of monumental erections.

Erections of this kind may be classed under three heads, viz.—

1. Those which are of a solid and substantial nature, and to a greater or less degree, according to the circumstances, affecting the structure of the sacred edifice with which they are connected.
2. Tablets, brasses, and the like.

(q) 1 B. & Ald. 508. See also *Rich v. Bushnell*, 4 Hagg. Eccl. 164, 175.

(r) 1 Add. 541; *Palmer v. Bishop of Exeter*, 1 Str. 576; *Carr v. Marsh*, 2 Str. 1080.

(s) 1 Hagg. Cons. 205, 208. See also *Palmer v. Bishop of Exeter*, 1 Str. 576; *Carr v. Marsh*, 2 Str. 1080.

3. Gravestones and other similar constructions unconnected with the building.

Monuments of the first class may cause considerable alteration in the interior of a church, and perhaps inconvenience the worshippers, and therefore a faculty will be granted only after a due examination of the circumstances. (*t*)

1. Monuments affecting structures.

As to the second class, "Tablets stand on a much more favourable ground than erections which may affect the fabric of the church; and if shown not to be injurious to the convenience of the beauty and stability of the fabric, a faculty for their construction will generally speaking be granted." (*u*)

2. Tablets, brasses, &c.

For the mere erection of gravestones in the churchyard, and not attached to the building, it may be doubted if a faculty is necessary, and certainly is seldom if ever applied for. But it is requisite for alterations in existing gravestones, and the application for such purpose will be dealt with in the same way as ordinary applications. Thus in *Sharpe v. Hansard*, (*x*) a faculty for changing the gravestones from upright to flat was granted, although opposed by a parishioner, on the ground of the expense to which it would put the parish; it having, however, been approved of by the vestry, the Court granted the faculty, directing that no individual should be put to expense by such alterations.

3. Gravestones.

In connection with monuments arises the incidental question as to the inscriptions which may be placed upon them. In *Brecks v. Woolfrey*, (*y*) this point was carefully examined by Sir Herbert Jenner, who laid down that "no person has a right to inscribe on a tombstone what his fancy may suggest,—*e.g.*, if such inscription shall impugn the doctrine or discipline of the Church of England, the person so offending would be liable to be punished, and the inscription struck out." The inscription there in question was as follows:—"Pray for the soul of

Inscriptions.

(*t*) See *Bardin v. Calcott*, 1 Hagg. Cons. 14.

(*u*) *Rich v. Bushnell*, 4 Hagg. Eccl. 175.

(*x*) 3 Hagg. Eccl. 336.

(*y*) 1 Curt. 880, 887.

J. Woolfrey. 'It is a holy and wholesome thought to pray for the dead.' (2 Mac. xii. 46.)" It was objected to as involving the doctrine of purgatory; but the Court held, that although the doctrine of purgatory included the practice of praying for the dead, still it did not necessarily follow that the converse of the proposition was true, viz. that prayers for the dead necessarily constituted a part of the doctrine of purgatory, as held by the Romish Church. (z)

Coats of arms,  
&c.

In connection with this subject come coats of arms, pennons, banners, and the like, which in past times were not unseldom placed against the walls or hung up in churches. They may not be put up without the consent of the ordinary, (a) and it would seem of the incumbent. (b)

Whose is the  
property in  
monuments, &c.

As to the property in such articles, and in monuments generally, Coke says (c): "That if a nobleman, knight, esquire, &c., be buried in a church, and have his coat, armour, and pennons, with his armes and such insignia of honour as belong to his degree or order, set up in the church, or if a gravestone or tomb be laid or made, &c., for a monument of him, in this case, albeit the freehold of the church be in the parson, and that these be annexed to the freehold, yet cannot the parson or any take them or deface them, but he is subject to an action to the heir and his heirs, in the honour and memory of whose ancestor they were set up."

## SUB-SECTION II.—*Non-structural Ornamentation.*

### CROSSES.

Crosses ;



THE question of crosses must be examined under two aspects —first, when they are so used as to be directly or indirectly subsidiary to, and in a manner, by juxtaposition or otherwise, part and parcel of a rite or ceremony; and secondly, when they

(z) *Brecks v. Woolfrey*, 1 Curt. 880.

(a) *Palmer v. Bishop of Exeter*, 1 Str. 576.

(b) See *Maidman v. Malpas*, 1 Hagg. Cons. 205.

(c) 1 Inst. 18 b. Compare *Horner v. Brewster*, 3 Bing. 136.



have no such significance and are purely architectural embellishments. The latter point will be left to the next chapter on "Decorations."

As to the first point. It is now fully established that any use of crosses, whether expressly intended, or by fair inference construed, to be symbolical or ceremonial, is utterly forbidden. An important and able judgment upon this is that pronounced by the late Bishop of Exeter in *Re Parks Smith (Clerk)*.<sup>(d)</sup> The bishop said: "The ornaments placed by Mr. Smith or by others, under his permission, on the Communion Table, prepared for the administration of the Lord's Supper on Easter Day last, were two glass vases containing flowers, and a cross about two feet high, decked with flowers. Was it unlawful for him to do this?"

are illegal if ceremonial.

Bishop of Exeter in *Re Parks Smith*.

"Now would it be lawful for any persons whomsoever, even for those officers to whose care the ornaments of the church are especially committed—would it be lawful for them to deck the Lord's Table, in preparation for the Holy Communion, with vases containing flowers, and with a cross placed on the table for the occasion? Certainly not; unless there be an express or implied direction so to do. It is not enough that there be no express prohibition. The very nature of the case, the general requisition of uniformity, and the positive enactment, 'that no form or order of common prayer, administration of sacraments, rites or ceremonies, shall be openly used, other than what is prescribed and appointed to be used,' all alike lead to the same conclusion, that it is not lawful for any person whomsoever to introduce novel ornaments at his own discretion. In truth, where would the claims of such discretion end?"

"If one person may, at his pleasure, decorate the Lord's Table with a cross, another may equally claim to set a crucifix upon it, whilst a third might think it necessary to erect some symbol of Puritan doctrine or feeling, to mark his reprobation of his Romanizing neighbours.

(d) Reported in Stephens' "Laws of the Clergy," at p. 1083.

“There is, indeed, one important order in the Book of Common Prayer, as it is settled by the last Act of Uniformity, and as it was enacted also by the similar statute of the 1st Eliz. c. 2, ‘That such ornaments of the church and of the ministers thereof, at all times of their ministrations, shall be retained, and be in use, as were in this Church of England by the authority of Parliament, in the second year of the reign of King Edward VI.’

“Now, were vases containing flowers and the cross decorated with flowers on the Lord’s Table at the ministration of the sacrament, in use at that period? If it could be shown that they were, this would indeed be a legal and full justification of the replacing of them now, however strange and novel such a decoration might appear. But nothing of the kind has been affirmed; and although it seems to have been suggested by the learned advocate for Mr. Smith that the promoter of the suit was bound to prove that these ornaments were not then in use, it cannot surprise any reasonable person, that the commissioners did not assent to this demand. The only direction in the rubric is, ‘That the table at the communion time have a fair white linen cloth upon it;’ and the 82nd Canon appoints, ‘That the Communion Table shall be covered in time of Divine service with a carpet of silk or other decent stuff, and with a fair linen cloth at the time of ministration.’ This must be holden virtually to exclude all else, except what is used or may be used, in the service itself.

“If any one venture to go further—to add anything which he may deem an ornament—he does it at his peril; he must be prepared to show, that what he adds ‘was in use, in this Church of England, in the second year of the reign of King Edward VI.;’ else he renders himself liable to ecclesiastical censures. . . .

“I abstain from discussing this reason; nor should I have mentioned it, did it not suggest a very strong presumption that

the cross was not retained on the Holy Table, by authority of Parliament, in the second year of King Edward VI.; for in the royal Injunctions set forth in that year (the document referred to), while there is an express order that the two candlesticks be retained (though for a very different reason from that which Durandus gives, and one with which the cross has no concern, viz. 'that Christ is the very true light of the world'), there is not a word respecting the cross: surely, therefore, the cross is not there retained. And if any doubt could remain, it would be removed by another passage of those Injunctions, in which, there being an express condemnation of 'whosoever doth superstitiously abuse ceremonies to the great peril and danger of his soul's health,' one of the instances specified is, 'making of crosses of wood upon Palm Sunday in time of reading of the Passion'—a time when, if ever, the exhibition of a cross should seem peculiarly appropriate.

"In the Injunctions of Archbishop Grindal in 1571, most particular directions were given to the churchwardens as to the furniture, and other things, which they were to provide, especially for the Communion Table, but no cross is in the number. There is, however, in another part, a direction both to the churchwardens and to the minister, to see that all crosses are utterly defaced, broken, and destroyed within the province of York.

"Five years afterwards, in 1576, when he had become Archbishop of Canterbury, in the articles to be inquired of within this province is specially included the following:— 'Whether crosses and such other relics and monuments of superstition be utterly defaced, broken, and destroyed.' Now, without claiming for these, his injunctions and articles, the authority of law, and without deferring largely to his judgment, we must at least see in them conclusive evidence, in the absence of everything to the contrary, that what an archbishop, first of York and then of Canterbury, thus peremptorily ordered

to be destroyed, could not have been among the ornaments which, only twelve years before, and under the same sovereign, that sovereign Queen Elizabeth, were ordered by statute to 'be retained, and be in use,' because they 'were in this Church of England, by the authority of Parliament, in the second year of the reign of King Edward VI.'

"The truth is, that however venerable, significant, and affecting the material image of the cross in itself is, the gross abuse which had prevailed respecting it, not only rendered the use of it in Divine service utterly intolerable, but caused, as is notorious, very strong and lasting prejudices to prevail against even the transient image of it made in the air, after the undisputed usage of Christian antiquity."

Comments on  
Bishop of Exe-  
ter's decision.

In this case the Bishop of Exeter had to decide, as a matter of fact, upon the *ceremonial use* of crosses. Mr. Parks Smith had placed them upon the Communion Table, and otherwise dealt with them in such a way as to render the employment of them symbolical, and not merely ornamental. The bishop's judgment, however, seems wider than the circumstances required, and to declare illegal the introduction, in any manner or form, of crosses into a place of worship.

Decisions of Dr.  
Lushington and  
Sir J. Dodson ;

'This was the construction put upon it both by Dr. Lushington, in the Consistory Court of London, and by Sir John Dodson, on appeal, in the Court of Arches, in the cases of *Westerton v. Liddell* and *Beal v. Liddell*, who also agreed with the reverend bishop in utterly disallowing the employment of crosses. (e)

and of the  
Privy Council  
as to the use of  
crosses.

The Privy Council, however, when these two cases came before them, somewhat qualified the generality of the conclusions arrived at as above set forth. They threw no doubt whatever upon the illegality of the employment of crosses in ceremonial matters, (f) but held that different considerations applied to their employment as decorations. "The genera

(e) Moore's Special Report, pp. 59-60 and p. 129.

(f) See *ante*, pp. 174-6.



question of crosses not used in the services, but employed only as decorations of churches, is entirely unaffected by the rubric [*i.e.* of Ornaments]. If crosses of the latter description were in use in the second year of Edward VI., they derive no protection from the rubric; if they were lawfully in use, they are not excluded by the rubric, though they might not have the sanction of Parliament.” (*g*)

Their lordships then considered whether crosses are included under the term “images.” “The next question is, are crosses forbidden under the term ‘images’ in the Injunctions and Act of Parliament relied on by Sir John Dodson?” After a careful investigation of the legislation and proclamation during Edward VI.’s reign, the Privy Council said: “No doubt, however, it (*h*) implies that to retain them [*i.e.* images] is illegal, but it relates, in their lordships’ opinion, to the destruction of images already ordered to be removed, but which either had not been removed, or having been so, were still retained for private veneration and worship; and the images so described, for the reason already assigned, cannot include crosses.” (*i*)

Are crosses  
images?

The judgment then proceeds, that:—“though the law did not require the removal from churches of crosses merely as such, both Books of Common Prayer had excluded them from use in the services.” (*k*) Upon the whole their lordships came to the conclusion “that crosses, as distinguished from crucifixes, have been in use as ornaments of churches from the earliest periods of Christianity; that when used as mere emblems of the Christian faith, and not as objects of superstitious reverence, they may still lawfully be erected as architectural decorations of churches; that the wooden cross erected on the chancel-screen of St. Barthabas is to be considered as a mere architectural ornament.” (*l*) As to this article, they accordingly reversed the judgment of the court below.

May be used as  
mere emblems,  
or decoration.

(*g*) Moore, Special Report, 161.

(*h*) *i.e.* 3 & 4 Ed. VI. c. 10.

(*i*) Moore, Special Report, 171.

(*k*) *Ibid.* 171.

(*l*) *Ibid.* 175.

Crosses  
attached to  
Communion  
Table ;

But there still remained to be determined the question of crosses attached to the Communion Table. And as to this, their lordships, after holding that the Table must be "flat and movable, capable of being covered with a cloth, at which, or around which, the communicants might be placed in order to partake of the Lord's Supper," said, "The question is, whether the existence of a cross attached to the Table is consistent either with the spirit or the letter of those regulations? Their lordships are clearly of opinion that it is not." (*m*)

or in proximity  
to Communion  
Table.

But though a cross may not be actually in connection with, yet it may be in close proximity to, the Holy Table. In the case just cited, a monition issued to the churchwardens *inter alia* to remove the crosses in question. An act on petition was subsequently presented, (*n*) complaining that this monition was uncomplished with. In reply to this petition it was stated "that the metal cross which was, on the 27th March, 1857, standing in the church or chapel of Saint Barnabas (attached to the ledge of wood at the back of the stone altar, which then stood in the chancel of the church or chapel), was at the present time placed on the sill of the centre compartment of the eastern window of the chancel of the church or chapel, five feet ten inches above the surface of the Communion Table, standing there, and wholly disconnected therewith." The Privy Council held this a sufficient compliance. "The stone table has been altogether removed, and with it the cross ; but the cross has been placed in another part of the church or chapel, not in any sense upon the table which has been substituted for the stone table, nor in any sense in communication or contact or connection with it." (*o*)

#### CRUCIFIXES.

Crucifixes.

Closely connected with the use of crosses is that of crucifixes

(*m*) Moore, Special Report, 186.

(*n*) *Liddell v. Beal*, 14 Moo. P. C. C. 7.

(*o*) *Ibid.* 14.

but beyond the decision already set forth (*p*) that the ceremonial use of such is forbidden, there is not as yet a judgment exactly in point. However, it cannot for a moment be doubted that the considerations as to the circumstances which will render the employment or setting up of crosses illegal, will apply with at least an equal force to crucifixes. Probably another conclusion may be drawn, viz. : crosses may be used purely as architectural embellishments, and to this extent they are allowable ; but can crucifixes ever be introduced into the buildings or worship of the Anglican Church save as typical or symbolical ? If not, then the introduction will be contrary to law.

Probably altogether illegal.

#### ORNAMENTS AND FURNITURE DIRECTED BY THE CANONS.

Various of the Canons required that certain articles shall be provided by the proper authorities for use in churches. Of these the chief are the following :—

20.—“ The Churchwardens of every parish against the time of every Communion, shall, at the charge of the parish with the advice and direction of the Minister, provide a sufficient quantity of fine white Bread and of good and wholesome Wine for the number of Communicants that shall from time to time receive these, which Wine we require to be brought to the Communion Table in a clean and sweet standing pot or stoop of pewter if not of purer metal.”

Bread,

wine,

and cup for the Communion.

58.—“ Every Minister saying the public prayers or ministering the Sacraments or other Rites of the Church shall wear a decent and comely Surplice with Sleeves to be provided at the charge of the parish, and if any question arise touching the matter, decency, or comeliness thereof, the same shall be decided by the discretion of the Ordinary. Furthermore, such Ministers as are Graduates shall wear upon their Surplices at such times such

Surplice.

Hood.

Hoods as by the orders of the Universities are agreeable to their degrees, which no Minister shall wear (being no Graduate) under pain of suspension. Notwithstanding it shall be lawful for such Ministers as are not Graduates to wear upon their Surplices instead of Hoods some decent tippets of black, so it be not silk."

Registry books,

70.—“ In every Parish Church and Chapel within this realm shall be provided one parchment book at the charge of the parish, wherein shall be written the day and year of every Christening, Wedding, and Burial which have been in that parish since the time that the law was first made in that behalf so far as the ancient books thereof can be procured, but especially since the reign of the late Queen. And for the safe keeping of the said book the Churchwardens, at the charge of the parish shall provide one sure coffer with three locks and keys, whereof the one to remain with the Minister and the other two with the Churchwardens severally; so that neither the Minister without the two Churchwardens nor the Churchwardens without the Minister shall at any time take that book out of the said coffer. And henceforth upon every Sabbath day immediately after Morning or Evening Prayer the Minister and Churchwardens shall take the said parchment book out of the said coffer, and the Minister in the presence of the Churchwardens shall write and record in the said book the names of all persons christened, together with the names and surnames of their parents, and also the names of all persons married and buried in that parish in the week before, and the day and year of every such Christening, Marriage, and Burial, and that done they shall lay up that book in the coffer as before, and the Minister and Churchwardens unto every page of that book when it shall be filled with such inscriptions shall subscribe their names. And the Churchwardens shall once every year within one month after 25th of March, transmit unto the Bishop of the diocese or his Chancellor, a true copy of the names of all persons christened, married, or buried in their parish in the year before ended the said 25th March, and the certain days

and box to  
hold them.



and months in which every such Christening, Marriage, and Burial was had, to be subscribed with the hands of the said Minister and Churchwardens, to the end the same may faithfully be preserved in the Registry of the said Bishop; which certificate shall be received without fee. And if the Minister or Churchwardens shall be negligent in performance of anything herein contained, it shall be lawful for the Bishop or his Chancellor to convent them and proceed against every of them as contemners of this our Constitution."

80.—"The Churchwardens or Questmen of every Church and Chapel shall at the charge of the parish provide the Book of Common Prayer lately explained in some few points by his Majesty's authority according to the laws and his Highness's prerogative in that behalf, and that with all convenient speed, but at the furthest within two months after the publishing of these our Constitutions. And if any parishes be yet unfurnished of the Bible of the largest volume or of the Books of Homilies allowed by authority, the said Churchwardens shall within convenient time provide the same at the like charge of the parish."

Book of Common Prayer.

Large Bible.  
Book of Homilies.

84.—"The Churchwardens shall provide and have within three months after the publishing of these Constitutions a strong Chest, with a hole in the upper part thereof, to be provided at the charge of the parish (if there be none such already provided), having three keys, of which one shall remain in the Custody of the Parson, Vicar, or Curate, and the other two in the Custody of the Churchwardens for the time being, which Chest they shall set and fasten in the most convenient place, to the intent the Parishioners may put into it their alms for their poor neighbours. And the Parson, Vicar, or Curate shall diligently from time to time, and specially when men make their testaments, call upon, exhort, and move their neighbours to confer and give as they may well spare to the said Chest; declaring unto them that whereas heretofore they have been diligent to bestow much substance otherwise

Chest for the alms.

than God commanded upon superstitious uses, now they ought at this time to be much more ready to help the poor and needy, knowing that to relieve the poor is a sacrifice which pleaseth God, and that also whatsoever is given for their comfort is given to Christ himself, and is so accepted of him that he will mercifully reward the same. The which alms and devotion of the people the keepers of the keys shall yearly, quarterly, or oftener (as need requireth) take out of the Chest and distribute the same in the presence of most of the parish, or six of the chief of them, to be truly and faithfully delivered to their most poor and needy neighbours."

#### SECTION IV.—*Ornamentation specially connected with the Holy Communion.*

Partition  
between the  
chancel and  
church.

NDER this head will come all the erections and furniture parcel of or belonging to the chancel. The first to be noticed are partitions dividing the chancel from the rest of the sacred building. In *Westerton v. Liddell* (q) it was decided that such are allowable. With reference to them, Dr. Lushington said:—"With respect to the brazen gates at St. Barnabas, they are connected with the screen which separates the nave from the chancel; and it is said that they are kept locked when public worship is not being performed, for the protection of the church ornaments and furniture within the chancel, the doors of the chapel being left open during a great part of the day. I do not approve of this screen or gates, and still less of the reason for keeping the gates closed. I regret that there should be ornaments patent in mid-day which would tempt to dishonesty; but having disposed of the cross, I do not feel that my duty requires me to proceed further and require the screen and gates to be removed. I am not satisfied that those articles are clearly

(q) Moore, Special Report, 61.

contrary to law, and if not I think the wisest course is to abstain from exercising any discretionary power with which my office may be invested ; at the same time declaring that in my opinion such separations between the chancel and nave are objectionable, and that I would not advise the bishop to consecrate a church fitted up according to this example. It is a different thing to pull down, especially when it cannot be said that the screen and gates are directly subservient to superstitious purposes."

### THE COMMUNION TABLE.

Of the erections appertaining to the chancel, by far the most important is that from which the Sacrament of the Lord's Supper is administered. Down to the present time the dispute has raged, and even now in ecclesiastical circles it still rages, as to whether this partakes more properly and peculiarly of the nature of an altar or a table. This dispute involves and depends upon matters of doctrine, the discussion of which is outside the scope of this work. And in addition the question is settled legally—directly, by a decision of the Court of Arches ; indirectly, by the subsequent recognition of that decision by the Privy Council.

The Communion Table.

The decision in question, commonly called the "Stone Altar Case," is that of Sir Herbert Jenner Fust in *Faulkner v. Litchfield and Stearne*,<sup>(r)</sup> in an appeal from the Consistorial Court of Ely, which had granted a faculty to the churchwardens of the parish of Holy Sepulchre, Cambridge, for the setting up of "a stone altar or altar table and credence table, such as are used for idolatrous and heretical purposes in popish churches." The judgment rendered in this case is so important that it is here set forth at some length.

The Stone Altar Case.

After stating the facts and allegations the learned Dean of Arches said : "With the motives of the parties I have nothing whatever to do. . . . The question is one simply of the construction of the rubrics which are incorporated in the Stat. 13 &

The judgment of Sir H. J. Fust.

(r) 1 Rob. Eccl. 184 ; 3 Notes of Cases, 537 ; 2 Stephens, "Eccl. Stat." 2072.

14 Car. II., called the Act of Uniformity, and of the Canons of the Church now in force, the Canons of 1603, and the 82nd Canon, which more particularly applies to the question, . . . . 'Is this or is it not, a communion table within the meaning of the rubrics and canons, and the general laws, canons, and constitutions ecclesiastical of the realm?' . . . . It would be useless for the Court, if it held that this is not a communion table, to grant a faculty which could not sanction an article illegal in itself. If it should appear that the true construction of the word 'table' in the rubrics and canons is, that it should be of wood, and movable, not fixed and immovable, the Court must proceed in the same manner as if it were so expressly declared and enacted."

Change of  
doctrine at the  
Reformation.

He then pointed out the importance of the word "altar" in connection with the pre-Reformation doctrines, and then went on thus: "Upon the renunciation of the doctrine of transubstantiation by the Reformed Church, it became necessary to remove from the minds of the people all those superstitious notions connected with that doctrine. Up to the accession of Edward VI., however, mass continued to be celebrated; and we find in his First Prayer Book (1549) that in the Order for the Celebration of the Mass the word 'altar' was used; but in the Second Prayer Book (1552) very material alterations were made in that Service. In the First Prayer Book the Communion Service is described as 'The Supper of the Lord and the Holy Communion, commonly called the Mass;' in the Second it was called 'The Order for the Administration of the Lord's Supper or Holy Communion,' and the word 'table' was substituted for 'altar.'

First Prayer  
Book.

Second Prayer  
Book.

"In the Second Prayer Book the following direction is given: 'And to take away the superstition which any person hath or might have of the bread and wine, it shall suffice that the bread shall be such as is usual to be eaten at the table with other meats.' This seems to throw a very important light upon the meaning of the word 'table' in the Second Prayer Book.



Religious  
events in  
1547-1550.

“ But in the interval between the publication of the two Prayer Books, certain events had occurred, and various Orders and Injunctions had been issued directing changes in the place where the sacrament was to be administered. In 1547 orders were given for the taking away and utterly destroying all shrines and monuments of superstition. In 1550 Bishop Ridley issued his Injunctions to the clergy in the diocese of London, ‘ For that the form of a table may more move and turn the simple from the old superstitious opinions of the popish mass, and to the right use of the Lord’s Supper, we exhort the curates, &c. to erect and set up the Lord’s board after the form of an honest table,’ and ‘ to take down and abolish all other by-altars or tables.’ And it appears from Cardwell’s ‘ Documentary Annals’ (No. 24, p. 100), that an Order in Council was issued to take down all altars and to place tables in their stead; and Burnet’s ‘ History of the Reformation’ (vol. ii. part ii. p. 31) states that letters were sent to every bishop to ‘ pluck down the altars,’ the reason assigned being that of ‘ removing the people from the superstitious opinions of the popish mass, and because table was a more proper name than altar for that on which the sacrament was laid.’ It is proper to keep this consideration in mind with reference to the alterations made at this time, when Communion Tables came to be used instead of altars.

“ It is clear that in the reign of Edward VI. the Communion Table was no longer of stone and fixed, but of wood and movable, and was required to be placed in the body of the church or in the chancel, where the minister could be most conveniently seen and heard. In the reign of Mary the acts passed in the preceding reign regarding religion were repealed; but upon the succession of Queen Elizabeth, in 1558, the statutes of Philip and Mary were in their turn repealed, and the orders contained in the Second Prayer Book of Edward VI. became again the rule for the administration of the sacrament. The object of this alteration was stated to be, the removal of the old superstitions

The Commu-  
nion Table of  
Edward VI.;

connected with the popish mass, and one mode of effecting it was to be by the abolition of all altars, and the substitution of tables. This change must mean something more than a mere alteration of name, for the mere change of the name would have left the old superstitious notion of a sacrifice still remaining; the alteration must have been a substantial, not a merely nominal one.

and of Elizabeth.

Canons of 1604.

“In the year 1571 (the reign of Elizabeth) a set of Canons and Constitutions Ecclesiastical was published, in one of which it is expressly stated of what material the Communion Table shall be made, namely, of wood: ‘*mensa ex asseribus composite juncta.*’<sup>(s)</sup> Therefore, beyond all doubt, in Queen Elizabeth’s reign, the Communion Table was not only movable but made of wood. In the reign of James I. the present canons were published; and the 82nd, though it does not expressly say, as that of 1571, that the table shall be ‘*ex asseribus juncta,*’ directs that it shall be a ‘decent table,’ and be placed, when the Holy Communion is to be administered, ‘in so good sort, within the church or chancel, as thereby the minister may be more conveniently heard of the communicants, in his prayer and ministration.’ That it is to be movable is implied by its having a different position at one time and at another.

Sir H. J. Fust next referred to and commented upon the chief religious movements and enactments of the reign of Charles, and he then proceeded:—“Therefore, at this time (in 1637) things stood in precisely the same state as they did in the reigns of Edward VI. and Elizabeth; there was a complete annihilation of the ancient structures; the tables were no longer immovable, they were no longer of stone; they were of wood, and movable. From this time, I cannot see that any alteration was made in any of the rubrics of the Book of Common Prayer till the time of the Restoration.

Act of Uniformity of 1662.

“Then we come to the real point,—has any alteration been

(s) See Cardwell’s “Synodalia,” vol. i. p. 123.

since made? Did the rubric of 1662 introduce any variation? The word 'table' is used throughout; and the present rubric affords no reason to suppose that any different sense was attached to the word than that which is given to it by common use. There is also a provision in the rubric for the Communion Service, guarding against any superstition connected with the bread and wine used in the ceremony, following up the alterations made in the reign of Edward VI., with reference to the superstitions associated with the doctrine of transubstantiation. And looking at the word 'table' itself, as used in the rubric, would anyone suppose that it meant such an object as is represented by the model before the Court? Any flat surface raised from the ground, and supported by pillars or otherwise, may be called a table; but a stone table of such a weight and such dimensions embedded in the floor does not correspond with the ordinary and popular meaning of the word. Upon my construction of the rubrics, therefore, I have no doubt that the article was meant to be a table in the popular sense of the word; and I have no difficulty in holding that the faculty in this case cannot issue."

The Communion Table must be a "table" in the popular sense.

This judgment, so careful and exhaustive, has since been admitted and followed, as containing a true exposition of the law. In *Beal v. Liddell*, the "Saint Barnabas" case, there was an altar of stone,—“not indeed a solid mass of stone, but the whole material was stone—thus described by the Right Hon. T. Pemberton Leigh: “It consisted of a marble slab, with a super-altar on the side nearest to the wall of the chapel. It stands apart from the wall, supported upon stone carved arches, the arches resting upon a stone plinth, which is let into and embedded in the pavement upon which it stands.” (t) Each of the tribunals before which the application came—the Consistory Court of London, (u) the Arches Court, (x) and the Privy Council (y)—ordered its removal.

*Beal v. Liddell*.

(t) Moore, Special Report, 157.

(u) *Ibid.* 28.

(x) *Ibid.* 129-130.

(y) *Ibid.* 185.



Communion  
Table must be  
movable.

As to the character of movability. It is not sufficient that the table should be merely not a fixture, and by possibility movable; it must be so far portable as to be moved, if and when required, by ordinary appliances. In the *Knightsbridge case*, Dr. Lushington said: "As to movability, it [*i.e.* the altar complained of] certainly is very massive, and could not be moved with facility; but I should be very reluctant to press the point of movability to the utmost to which it could be carried, the more so as in these days the custom of moving the table has altogether, as I believe, ceased. If the table be of wood, and capable of being moved, though with some difficulty, I do not conceive that I am bound by the judgment I have cited (*z*) to pronounce it contrary to law." (*a*) This portion of the decision was acquiesced in; but the Privy Council with reference to it observed incidentally: "These Injunctions [*i.e.* of Elizabeth] plainly show that the Communion of the Lord's Supper was to be held at a table as distinguished from an altar, a table in the ordinary meaning of that term; that as, by the rubric, the bread used was to be 'the ordinary bread eaten at table with other meats,' so the table was to be of the character of those employed on such occasions; that it was not only to be movable, but was from time to time to be moved." (*b*) "The Communion Table was to be provided by the parish; was to be movable not by machinery, but by hand; and was actually to be very frequently moved." (*c*)

Of wood.

The material must be wood. It was so decided in the *Stone Altar case*, (*d*) and by Dr. Lushington and Sir John Hodson in *Westerton v. Liddell*, in which latter case the Privy Council came to the same conclusion. "Their lordships had at first some doubt whether the law had prescribed of what material the

(*z*) *Faulkner v. Litchfield*, 1 Rob. Eccl. 184; *ante*, p. 241.

(*a*) Moore, Special Report, 27.

(*b*) *Ibid.* 183.

(*c*) *Ibid.* 185.

(*d*) 1 Rob. Eccl. 184.



table should be made ; but, on further consideration, they are satisfied that the opinion expressed by Sir H. J. Fust, and adopted in the decree in this case, is well founded.” (e)

As to the shape, the Privy Council laid down, though it was but an extra-judicial dictum, that the table must be “flat.” Upon this Sir H. J. Fust, in *Faulkner v. Litchfield*, (f) after pointing out that at the time of the Reformation most of the altars were of stone, and in the form of tombs, added, “Such was the description of altar which was to be got rid of at this time, in order to remove as far as possible all those superstitious notions which attached to the performance of those services in the Church of Rome which were connected with the doctrine of transubstantiation, or the change of the elements of the Lord’s Supper.” But Dr. Lushington, in the *Knightsbridge* case, considered this to be a matter for his discretion. He said : “With respect to its shape, though I wholly disapprove of the making any Communion Table to resemble a tomb, or any imitation of any such practice, yet I do not think that shape so prominent as to call for the intervention of legal correction, and I am most unwilling to interfere save where my duty is imperative.” (g) This decision was not appealed.

Shape of table.  
S<sup>e</sup>mble, it ought  
to be flat ;

and certainly  
not in form of  
a tomb.

It would seem that under special circumstances, if not as a general fact, various appendages or additions may be made to the Communion Table, even though such assume the appearance and nature of a “super-” or “high-” altar or retable. In *Liddell v. Beal*, (h) which arose out of *Beal v. Liddell*, being an application for enforcing the monition to remove a stone altar that had been issued in this latter case, the act on petition alleged that the monition was still uncomplied with, in that “the table which had been substituted in the church or chapel for the stone altar which formerly stood therein was not a flat table, but had an elevation or structure placed thereon, so as to

Appendages to  
table.

Super- or high-  
altars ;

(e) Moore, Special Report, 184.

(f) 1 Rob. Eccl. 184, 219.

(g) Moore, Special Report, 27.

(h) 14 Moo. P. C. C. 7.

resemble what is generally known and described as a super-altar in Roman Catholic churches or chapels." The answer said, "That the table which had been substituted in the church or chapel for the stone altar which formerly stood therein was a flat movable table of wood; and that the elevation or structure alleged in the second article of the act on petition, as placed thereon, was simply a movable ledge of wood placed in order that two candlesticks might stand thereon at the back of the table, and that the ledge was raised up before the celebration of the Lord's Supper."

apparently are  
allowable;

Upon these facts the Privy Council decided that the monition had been literally complied with, and they also considered that a super-altar is not an unlawful ornament. They said:—"The monition directs that there shall be provided 'instead thereof [*i.e.* of the stone altar] a flat movable table of wood.' That has been done. It is stated, however, with truth, that upon this table there is placed, and in general stands, a movable ledge of wood for the purpose of holding candlesticks and vessels; at least, that is the purpose for which it is used. It is, as I have said, not fixed to the table. If remaining there when the cloth is to be placed upon the table for the purpose of the administration of the Lord's Supper, as it would interfere with that, it is accordingly removed and the cloth is placed upon the table, and then the ledge is replaced. It is not shown, and their lordships think it not to be inferred, that there is anything superstitious (if the term may be used) or anything improper in the addition of that ledge. But even if there were, their lordships are not satisfied that it is within the terms of this monition, or that the monition in any sense or respect extends to it." (i)

though within  
the discretion of  
the court.

In *Sieveking and Evans v. Kingsford* (k) a movable ledge or super-altar had been erected without authority in that behalf first obtained, and upon application being subsequently made to

(i) *Liddell v. Beal*, 14 Moo. P. C. C. 7, 14-15.

(k) 36 L. J. Eccl. 1.

Dr. Lushington, as Judge of the Consistory Court of London, for a confirmatory faculty to sanction the continuance thereof, he refused permission.

*Candlesticks.*—The admissibility of these depends entirely upon the purposes for which they have been placed upon or in connection with the Holy Table. They are allowable only when lights are allowable, and when *bonâ fide* intended to be the instruments for holding these lights, that is candles, so necessary. The question of lights in connection with the Communion Table has already been discussed in chapter v. section iv. (l) and in so far as the question of candlesticks depends upon and is to be determined by that of lights, reference must be made to what was there said.

Candlesticks allowable only when for lighting.

Supposing lights by means of candles to be necessary, other points arise as to the shape and size of the candlesticks, their *bonâ fide* employment, &c. In reference to this, Dr. Lushington, in *Westerton v. Liddell*, said: (m) “I am well aware that it may be said, ‘Some proper lights on the Communion Table may be used when necessary; but the lights in question are not proper lights. The candlesticks and candles are not such as would be ordinarily used for necessary purposes, but of a peculiar construction—a construction which shows they are meant for ornament and not for use.’ I admit the force of this objection, but then follows another difficulty. How is it possible that the Ecclesiastical Court should scan in each individual instance the make and size of each candlestick and candle? What limits am I to prescribe? What candlestick would I hold to be ornamental, and what not? If candlesticks are to be used at all they ought to be in some conformity with the rest of the furniture of the church, which necessarily varies in excellence, though not in size, according to the wealth and circumstances of the district in which the church is situate. After mature deliberation I am of opinion that the circumstances

Shape, &c.

(l) See also *ante*, pp. 168-9.

(m) Moore, Special Report, 70-1.



of this case do not render it my imperative duty to enter into such minute details."

Coverings for  
Holy Table.

Canon 82.

Next come the coverings for the Holy Table. The 82nd Canon provides: "Whereas we have no doubt but that in all Churches within the realm of England convenient and decent tables are provided and placed for the celebration of the Holy Communion, we appoint, that the same tables shall from time to time be kept and repaired in sufficient and seemly manner, and covered, in time of Divine Service with a carpet of silk or other decent stuff thought meet by the ordinary of the place if any question be made of it, and with a fair linen cloth at the time of the ministration as becometh that table, and so stand saving when the said Holy Communion is to be administered."

Cloths of  
various colours  
are allowable.

In *Westerton v. Liddell* Dr. Lushington held (n) that this canon contemplates that the covering shall be one and the same at all times other than during the administration of the Holy Communion, and that cloths for it of various colours for different seasons of the year were, if not positively illegal, at least discretionary with the ordinary to permit, and he therefore refused to allow more than one covering; which decision was affirmed by the Dean of Arches. (o) The Privy Council, however, refused this. They observed, "Next, as to the embroidered cloths, it is said that the canon orders a covering of silk or of some other proper material, but that it does not mention and therefore, by implication, excludes, more than one covering. Their lordships are unable to adopt this construction. An order that a table shall always be covered with a cloth surely does not imply that it shall be covered with the same cloth or with a cloth of the same colour or texture. The object of this canon seems to be to secure a cloth of a sufficiently handsome description, not to guard against too much splendour."

"The result of their [*i.e.* Judicial Committee] judgment in *Liddell v. Beal* I take to be that there is no legal restraint on

(n) Moore, Special Report, 75-8.

(o) *Ibid.* 131.



the use of several cloths and of divers colours for the Communion Table, but that such a matter is to be dealt with at the discretion of the ordinary.” (p)

But though cloths of various colours may be used, they must be of plain material and without fringes or embroidery. “The last question is with respect to the embroidered linen and lace used on the Communion Table at the time of the ministration of the Holy Communion. The rubric and the canon prescribe the use of a fair white linen cloth, and both the learned judges in the court below have been of opinion that embroidery and lace are not consistent with the meaning of that expression, having regard to the nature of table upon which the cloth is to be used. Although their lordships are not disposed in any case to restrict within narrower limits than the law has imposed the discretion which within those limits is justly allowed to congregations by the rules both of the Ecclesiastical and the Common Law Courts, the direction of the rubric must be complied with; and upon the whole their lordships do not dissent from the construction of the rubric adopted by the present decree upon this point, and they must therefore advise Her Majesty to affirm it.” (q)

Cloths must be plain.

#### CREDENCE TABLES AND BALDACCHINOS.

Sir H. J. Fust in *Faulkner v. Litchfield* (r) held that credence tables are illegal. This decision was approved and followed in *Westerton v. Liddell* and *Beal v. Liddell* by both Dr. Lushington (s) and Sir John Dodson. (t) But the Privy Council on the appeal in these latter cases reversed the decisions below, and determined that credence tables certainly are allowable,

Credence Tables

are allowable.

(p) Per Right Hon. Lushington in *Sieveling & Evans v. Kingsford*, 36 J. Eccl. 1, 3.

(q) The Judgment of the Privy Council in *Westerton v. Liddell*, Moore, Special Report.

(r) Rob. Eccl. 184.

(s) Moore, Special Report, 28.

(t) *Ibid.* 130.

and probably are absolutely essential. They said, "Now what is a credence table? It is simply a small side-table on which the bread and wine are placed before the consecration having no connection with any superstitious usage of the Church of Rome. Their removal has been ordered on the ground that they are adjuncts to an altar; their lordships cannot but think that they are more properly to be regarded as adjuncts to a Communion Table. The rubric directs that at a certain point in the course of the Communion Service (for this is, no doubt, the true meaning of the rubric) the minister shall place the bread and wine on the Communion Table, but where they are to be placed previously is nowhere stated. In practice they are usually placed on the Communion Table before the commencement of the service, but this is certainly not according to the order prescribed. Nothing seems to be less objectionable than a small side-table from which they may be conveniently reached by the officiating minister, and at the proper time transferred to the Communion Table, (*u*) and where a confirmatory faculty was granted to sanction the use *inter alia* of credence tables."

Baldacchinos.

Baldacchinos, or altar canopies, previous to the Reformation were in rather general use in England and are still found under various shapes in not a few churches. Their introduction here is referred to a Constitution of Archbishop Peckham, A.D. 1279:—"Dignissimum Eucharistæ Sacramentum præcipimus de cætero taliter custodiri, ut in quâlibet Ecclesiâ Parochiali fiat Tabernaculum cum clausurâ, decens et honestum secundum curæ magnitudinem et ecclesiæ facultates, in quo ipsum dominicum corpus non in bursâ vel loculo propter diminutionis periculum nullatenus collocetur, sed in Pyxide pulcherrimâ, lino candidissimo interius adornatâ; ita quod sine omnium diminutionis periculo facile possit extrahi et imponi."

(*u*) Moore, Special Report, 187-8. See *Sieveling & Evans v. Kingsford* 36 L. J. Eccl. 1.

In *White v. Bowron* (x) it was determined that all constructions of this description are illegal. This cause was an application to the Court by the vicar and the churchwardens of the parish of St. Barnabas, Pimlico, to issue a faculty authorizing the erection of a baldacchino over the Communion Table of the church of that parish. The petitioners for the faculty had, in accordance with a practice not unusual in the diocese of London, previously submitted the plan for the baldacchino to the Bishop, who, by an indorsement on the plan, directed the attention of the Court to the peculiar character of the proposed erection.

*White v. Bowron.*

The proposed baldacchino was a handsome marble structure or canopy, with a pointed roof, and three gables pointing different ways, supported by four columns, standing apart from the east wall of the church, and would cover the Holy Table, leaving sufficient space for the celebrant priests to stand within the canopy on the north and south sides of the Table.

Description of the baldacchino.

Affidavits were filed on behalf of the vicar and churchwardens, which stated that canopies, baldacchins, or baldacchinos surrounding the Communion Table were still in existence in the following churches and chapels of the Church of England: St. Mary Woolnoth; St. Dunstan in the East; St. Augustine,aggerstone; St. George, Bloomsbury—all in the diocese of London; Trinity College Chapel and Clare College Chapel, in the diocese of Ely; Lincoln Minster; St. Barnabas, in the city of Oxford; Totness Parish Church; Sidcup Parish Church, in the diocese of Canterbury; St. John Miles Platting, in the county of Lancaster; and that in the consecrated churches and chapels of the Church of England enumerated in the following list were to be found canopies and coverings not supported by pillars, but projecting over the Communion Table:—The Parish Church of Burford, in the county of Oxford; the Beauchamp Chapel, Warwick; St. Michael, Tenbury, in the county

Many erections of this kind still in existence.

of Worcester; Wadham College, in the city of Oxford; and the Parish Church of Houghton-le-Skerne, in the county of Durham.

Baldacchinos  
are unlawful.

Upon a careful consideration of the authorities and facts, the learned commissary (Dr. Tristram) came to the conclusion that the baldacchino prayed for, was a church ornament within the rubrics; that it was not prescribed by the rubrics, nor in any way necessary or subsidiary to the performance of the services of the Church; and, consequently, that it was unlawful.

It will be noted that the application here was for leave to erect a baldacchino where one had not before been erected, and not for a faculty to remove or modify one already erected.

### REREDOS.

The question has been raised as to the legality of this erection. This was in the case of *Philpotts v. Boyd*, (z) where the Dean of Arches held that such an erection is perfectly allowable. After adverting to the principal features of the case, his lordship said he was "of opinion that the bishop, acting alone, had not the power to order the removal of the reredos any more than he had the power, acting alone, to prevent the Dean and Chapter from putting it up." This, however, decided nothing as to the legality of the ornament, and therefore the learned Dean examined this question also. "Inasmuch, however, as he [*i. e.* the judge] thought the parties had a right to the judgment of the Court upon the most important part of the case, namely, upon the legality of the structure itself, he would not shrink from the labour and responsibility of giving his decision on that point also."

The learned judge then went fully into the matter. "It

(z) *Philpotts v. Boyd*, "Times," Aug. 7, 1874. It ought to be mentioned that this very important case, like not a few others, has been, for the time at least, entirely overlooked by the official reporters, and consequently the only existing reports of it have to be sought for in the newspapers. [*Author.*]



was, no doubt, legal for the bishop to hold a triennial or special visitation; and it was at the latter that the bishop had ordered the removal of the reredos." After mentioning several cases, the learned Dean expressed himself as clearly of opinion that the appeal to this court was properly brought. "The bishop had held, with the advice of his assessor, that the erection of a reredos without a faculty was illegal, as also were the images hereon."

"The appellants, as he understood the argument, did not object to the right of the bishop to visit the cathedral, but contended that his power was limited; and after the decision in the case of the Dean of York and the Order in Council as to the Diocese of Exeter, it was clear that whatever was to be done in such a matter was to be done not by the bishop acting alone, but by the proper court. For instance, as to stealing of the Communion Plate, a bishop would have power on a visitation to inquire into the matter, but the punishment for such an offence would be for a criminal court. He had asked how in this particular case the order of the bishop was to be enforced on the Dean and Chapter, and he had received no answer. No case had been cited to the Court of a faculty being obtained by a dean and chapter for the erection of a reredos; and before he [*i.e.* the judge] held his present office, he had been chancellor of several dioceses, and could not remember a single instance of a faculty for a reredos in a cathedral."

## CHAPTER IX.

DECORATION, AND OTHER SUBSIDIARY  
MATTERS OF ORNAMENTATION.

What is the  
real status of  
articles in ques-  
tion?



ERE, as in the corresponding chapter on Ritual and Ceremonial, (a) the important and primary point is, what is the true nature of the articles; and not, what is their legal status? The latter is really a subordinate question, the answer to which depends upon, and can be given almost as a matter of course after, the solution of the former.

Dr. Tristram  
in *White v.*  
*Bowron*.

The first point in reality involves two distinct questions. As was clearly put by Dr. Tristram in *White v. Bowron*, (b) “the first question is whether the article in dispute is an ornament in the sense in which the term ornament is used in the rubrics of the Prayer Book, or whether it is nothing more than an architectural adornment or decoration.” Then follows, or may follow, the other question,—If an ornament within the rubrics, is it an allowable ornament, either as being expressly directed, or as being subsidiary to the Services?

Here also must be noted the very important observations contained in one of the judgments of the Privy Council in the suit of *Martin v. Mackonochie*. (c)

“There is a clear and obvious distinction between the pre-

(a) Chapter vi.

(b) L. R. 4 Adm. & Eccl. 207, 216.

(c) L. R. 2 P. C. 387.

sence in the church of things inert and unused, and the active use of the same things as a part of the administration of a sacrament or of a ceremony. Incense, water, a banner, a torch, a candle and candlestick may be parts of the furniture or ornaments of a church; but the censuring of persons and things, or, as was said by the Dean of Arches, the bringing in incense at the beginning or during the celebration, and removing the same at the close of the celebration of the eucharist; the symbolical use of water in baptism, or its ceremonial mixing with the sacramental wine; the waving or carrying the banner; the lighting, cremation, and symbolical use of the torch or candle: these acts give a life and meaning to what is otherwise inexpressive, and the act must be justified, if at all, as part of a ceremonial law."

These expressions were cited with approval by the Dean of Arches in *Elphinstone v. Purchas*; (d) and his lordship thus commented upon the use by the defendant of certain figures and flowers in the conduct of worship in his own church:—

"I think the result of the evidence is, that these figures, having regard to the time and the services during which they were brought in and removed, being also emblematic in their character, were ceremonially used upon the occasions referred to, and that, according to the judgment in *Martin v. Mackonochie*, they were therefore illegal. It is very possible, however, that these things, perfectly innocent in themselves, were, in fact, not so used as to fall under the prohibition which attaches to the introduction of new ceremonies; and that, if an explanation had been offered, or other evidence adduced by the defendant, I might have arrived at the conclusion that the things in question belonged merely to the category of what the Privy Council have termed 'inert' decorations, and were not actively used in the service, in which case, as at present advised, I should not have pronounced them illegal."

In reference to Ornaments and to the rubrics relating thereto,

(d) L. R. 3 Adm. & Eccl. 66, 107.

Sir R. Phillimore on ornaments.

Sir Robert Phillimore has said : (*e*) “ I must repeat that the rubrics, with respect to decorations and furniture of the church, are not exhaustive. This point has been decided by the Judicial Committee of the Privy Council. They allowed on this principle the use of the cross and the credence table, and various coloured cloths for the Holy Table. They allowed also the use of a moveable ledge for the purpose of holding candlesticks upon the Holy Table. This question came before their lordships as a corollary to their principal decision on the *Knights-bridge Church cases*. It was contended that the monition of the Court with respect to St. Barnabas Church had not been obeyed, as to the Holy Table or as to the cross.”

What the learned judge here meant is by no means clear. The Privy Council have decided and reiterated, (*f*) that the rubrics are exhaustive as to “Ornaments.” They have also decided, and that in the case referred to by Sir Robert Phillimore, not only that the rubrics are not exhaustive “with respect to decorations and furniture,” but also that the rubrics do not contain any strict and unbending rules in regard to such matters.

Two kinds of decorations :  
1. Such as cannot be made ceremonial ;

2. Such as being inert are allowable.

There will, consequently, be two distinct kinds of decorations or embellishments. First, such as are simply and absolutely so, and which cannot by any proceedings, whether of the minister or the congregation, be made symbolical or ceremonial, or be transformed into “ornaments.” Secondly, those which if put into active use would become “ornaments,” and perhaps as such be unlawful, but which being “inert” are allowable.

Under the first kind, will be included all merely architectural displays and arrangements. The architecture, external and internal, of the House of God may be of the plainest and barest description, if so preferred by the founder thereof, or the congregation who attend. It may equally be of the most gorgeous and elaborate description, as rendering to the Deity the most fitting tribute of the human intellect and emotions.

(*e*) L. R. 2 Adm. & Eccl. 200.

(*f*) See *ante*, pp. 220-2.



Bells and organs must also be placed in the former category. Bells and organs.  
 With the exception of these articles, however, it is very doubtful whether there are any ornaments which—though legal, if “inert”—cannot by the mode of user, their accessories, or their other surroundings, be rendered unlawful.

Thus windows of stained glass, whether plain or containing figures or representations, are unquestionably legal, provided always that such are not typical of forbidden or superstitious rites or doctrines. (*g*) Stained windows.

So, by Canon 82, texts of Scripture may be inscribed upon the walls, but not maxims (*b*) or pictures, &c., which have a superstitious meaning or which inculcate unlawful doctrines. (*i*) Texts of Scripture.

*Flowers.*—In the case of the *Rev. Parks Smith* (*k*) the Bishop of Exeter held that the employment of flowers upon and in connection with the Communion Table was unlawful; but the present Dean of Arches has ruled the contrary. In *Elphinstone v. Purchas*, (*l*) one charge was that the defendant on various occasions “caused vases of flowers to be placed on the Holy Table, or on a narrow ledge resting thereon, or fixed immediately above the same, so as to appear, and with the object and intention of being made to appear to the congregation, to be in contact or connection with the Holy Table, and allowed them to remain so placed on each of the said occasions during the performance of Divine Service. That you also, during Lent, 1869, caused the said vases of flowers to be removed and taken away; and again afterwards, more especially on Easter Sunday, March 28th, 1869, and on Whit Sunday, May 16th, 1869, replaced, or caused to be replaced, the said vases with the same or other flowers; and Flowers.

(*g*) See 3 & 4 Ed. VI. c. 10, ss. 1 & 2, given *post*, part iii. chap. ii.; Gibson's Codex, 1465. See also *Pricket's case*, Cro. Jac. 366.

(*h*) See *Brecks v. Woolfrey*, 1 Curt. 880.

(*i*) *Fagg v. Lee*, L. R. 4 Adm. & Eccl.; Gibson's Codex, 1465.

(*k*) Reported, Stephens, “Laws Relating to the Clergy,” vol. ii. 1083.

(*l*) L. R. 3 Adm. & Eccl. 66, 106.

that you also profusely decorated or caused to be profusely decorated, the said Holy Table with flowers, the circumstance of such vases and flowers being so placed and kept on the Holy Table or removed therefrom, being intended by you as and constituting a ceremonial and symbolical observance." The practice here set forth was considered by the Dean of Arches to be perfectly allowable. His judgment upon the point was as follows :—

Judgment of  
Dean of Arches.

"With regard to this charge, there is no evidence that the flowers were used as an additional rite or ceremony, or as an ornament in the sense affixed to that word in the judgment of the Privy Council in *Liddell v. Westerton*. They appear to me an innocent and not unseemly decoration, and one not ministering or subsidiary to any usage or doctrine which the Church has rejected or abrogated, and to be in the same category with the branches of holly at Christmas and the willow blossoms on Palm Sunday with which our churches have very generally been adorned. I have considered the Bishop of Exeter's judgment (*m*) on this point, to which I was referred, of which I think it was enough to say that it was given nearly ten years before the decision in *Liddell v. Westerton* had settled the law, and drawn the distinction between ornaments (ornamenta), and decorations."

### BELLS.

Bells.

15th Canon.

The rubric says that "the curate . . . shall cause a Bell to be tolled thereunto a convenient time before he begin" Morning or Evening Service. The 15th Canon enjoins that: "Upon Wednesday and Friday weekly, the Minister at the accustomed hours of service, shall resort to the church or chapel, and warning being given to the people by tolling of a bell, shall say the Litany."

67th Canon.

And the 67th that: "When any is passing out of this life, a

(*m*) *Re Parks Smith, ubi supra.*

bell shall be tolled, and the Minister shall not then slack to do his last duty. And after the party's death (if it so fall out), there shall be rung no more but one short peal, and one other before the burial and one after the burial."

With respect to these provisions, it has been decided that there must be a bell to summon the congregation to church, and to toll at funerals, but that is all that is absolutely necessary. (n)

And if the majority of the vestry thought fit to make a rate for the repair of the bells, such rate could have been enforced. (o)

As to the ringing of bells at other than the times expressly appointed, the 88th Canon lays down that "the Churchwardens or Questmen and their assistants, shall not suffer the bells to be rung superstitiously upon Holidays, or Eves abrogated by the Book of Common Prayer, nor at any other times, without good cause to be allowed by the Minister of the place and by themselves." 88th Canon.

And the 111th Canon: "In all visitations of Bishops and Archdeacons, the Churchwardens or Questmen and Sidemen, shall truly and personally present the names of all those which behave themselves rudely and disorderly in the Church, or which by untimely ringing of bells, by walking, talking, or other noise shall hinder the Minister or Preacher." 111th Canon.

The real custody and control of the bell, as of the church and the general ornaments thereof, belong to the incumbent; (p) but ringing, to constitute an offence, must be not merely "without his consent," but "against his wishes." (q) Unauthorized ringing.

## ORGANS.

Organs come under the head of allowable, not compulsory ornamentation. They are not necessary in a parish church for Organs are not necessary, but advisable.

(n) *Pearce & Hughes v. Rector of Clapham*, 3 Hagg. Eccl. 10.

(o) *Smith & Willis v. Dixon*, 2 Curt. 270.

(p) *Redhead v. Wait*, 6 Law Times (N.S.), 580; *Harrison v. Forbes & Sisson*, 6 Jur. (N.S.), 1353.

(q) *Daunt v. Crocker*, L. R. 2 Adm. & Eccl. 41; 37 L. J. Eccl. 1.

the decent performance of Divine worship, therefore the parishioners are not bound to provide an organ; but though not necessary, they are extremely decent, proper, and even customary in a parish that is extensive and opulent. (r)

Cannot be  
erected without  
a faculty.

As is the case with alterations in or additions to the sacred edifice, organs cannot be legally erected in a parish church without a faculty. (s) A faculty for such purpose is not granted without a decree and intimation to the parishioners, in order that any one may object. The consent of the parishioners, however, does not bind the ordinary; it is in his discretion to grant or withhold the faculty; but he should not be inclined to discourage the erection of an organ. (t)

Their erection  
not to be dis-  
couraged.

The erection of organs in parish churches is not to be discouraged if the circumstances of the parish, regard being had to its opulence and population and to the size of its church, offer no objections. Of these circumstances, the ordinary is to judge; on any expense to be incurred the parish alone is to decide. (u)

The wishes of the parishioners will be consulted as far as possible, and provisions inserted in the grant of a faculty to prevent the expense falling upon them. But "the consent of the parishioners to the erection of an organ is not the only thing material to found the application for a faculty for that purpose, since the measure may be improper in consideration of the parish or church, or private rights may be affected. It may therefore be the duty of the ordinary to interfere and protect the parish from its own indiscretion, as if the parish was small and the rent of houses high, or there should be other circumstances rendering such an addition to the church inexpedient. Attending to these considerations, the Ecclesiastical Courts have usually adopted the rule of inserting a clause in

(r) *Pearce & Hughes v. The Rector of Clapham*, 3 Hagg. Eccl. 10.

(s) Part ii, chap. iii. sect. 2.

(t) *Ibid.*; and see *Pearce & Hughes v. The Rector of Clapham*, *ubi supra*.

(u) *Ibid.* See also *Jay v. Webber*, 3 Hagg. Eccl. 4, 8.



the faculty that no expense shall fall on the parish, but this rule is discretionary only, and though generally proper, by no means binding." (x)

These principles may be considered in connection with the cases following, relating to the grant of a faculty to enable an organ to be erected. In the first, an organ having been presented as a gift by a parishioner, a faculty for accepting it and erecting it was granted on the application of the churchwardens, although opposed by a portion (not the majority) of the parishioners, and that without any clause respecting the provision for an organist or for exonerating the parish from the expenses that might be incurred in maintaining it. (y)

A faculty for accepting gift of an organ given, though opposed by some parishioners.

In the next the organ was also a donation from a parishioner, and a faculty was applied for to enable the churchwardens of a parish church to accept and erect it. Before granting the faculty, Lord Stowell said, "That although the organ would be a gift still there might be expenses arising out of it, as for erecting it, keeping it in order, and for an organist, and as those might fall on the parish it might render the consent of the parishioners generally necessary, adding, however, that he was disposed to hold the majority of the parish (which was in favour of the faculty being granted) binding in such a question as that, although it might not bind in all cases, as if an organ was to be voted without the authority of the ordinary." (z)

In another case, where it clearly appeared that the church was already too small for the inhabitants of the parish, and that the erection of an organ would lessen the number of sittings by causing their removal, Sir George Lee, Dean of the Arches, refused to grant a faculty reversing the decree of the Consistory Court. (a)

Faculty refused where organ would lessen the already too small accommodation.

(x) *Jay v. Webber*, *ubi supra*.

(y) *Ibid*.

(z) *The Churchwardens of St. John's, Margate, v. the Parishioners, Vicar & Inhabitants of the same*, 1 Hagg. Cons. 198, 200.

(a) *Randall & Horden v. Collins & Ludlow*, 2 Lee, 217.

Organ may be necessary in collegiate chapels.

It is evident that in a collegiate church an organ may be necessary from the manner in which the service is there performed, but in a parish church it is not an article of legal necessity. (*b*)

The churchwardens have no power whatever as to controlling the organ or other music. In *Hutchings v. Denzile & Lovibond* (*c*) they were proceeded against by the officiating curate for obstructing the singing of the children of the ward, accompanied by the organ. The articles were admitted, the Court, after examining the history and introduction of music into our church service, ruling that the churchwardens had illegally interfered.

(*b*) *Jay v. Webber*, 1 Hagg. Eccl. 4, 8.

(*c*) 1 Hagg. Cons. 170.



CHAPTER X.

THE POSITION OF THE LAITY WITH REGARD  
TO THE CONDUCT OF PUBLIC WORSHIP.

HE relation of the laity to Public Worship, and their rights, privileges, and duties in respect thereof, will not need a lengthened discussion. They are in a manner passive. They may attend the services, may join in them and partake of the sacraments, but they do not control or direct the services or any portion of them; they cannot originate innovations in or omissions from rites or ceremonies; they cannot introduce ornaments into the sacred edifice. Nor, indeed, have they power directly to prevent this. They can do so only indirectly and at great expense and trouble, by setting in motion the machinery of the law.

The laity in manner passive.

In matters affecting the laity, two distinct classes of persons have to be considered, viz. first, the churchwardens or sidesmen, and secondly, the ordinary laity. The former have an official position and a status, both legal and ecclesiastical, which frequently brings them directly into contact with ecclesiastical personages and under the supervision of the Ecclesiastical Courts. Consequently they possess rights and are under duties very different from those which are incidental to other laymen.

Two classes to be considered, churchwardens or sidesmen ;

As regards the ordinary laity, they for many purposes must

and the ordinary laity.

be distinguished, first, into those which are, and secondly, those which are not members of the Church of England. It is true that at birth, marriage, and death the Church recognizes little if any distinction, and at these most momentous periods of a human being's history she extends her ministrations to all alike. (Perhaps the only exceptions are in the case of the marriage and burial of excommunicates.) But in many other matters important differences arise, *e.g.* in respect of the participation in the Holy Communion, the right to institute proceedings, whether civil or criminal, before ecclesiastical tribunals, and the like.

What persons are members of the Church of England.

As to the persons who are members of the Church of England, Dr. Stephens, after referring to the rubrics of the Confirmation and Communion Services, says : (*d*)—"These rubrics, in conjunction with Stat. 1 Ed. VI. c. 1, are very important, because if any person be baptized and confirmed, or ready and desirous to be confirmed, he has then (unless he labour under a disqualification which would justify a priest in repelling a member of the United Church of England and Ireland from the Holy Communion) a legal right to be admitted to the Holy Communion, and when admitted to the Holy Communion he becomes, *eo instanti*, whatever his previous religious tenets may have been, a member of the United Church of England and Ireland, and the right to be so admitted he can enforce by mandamus."

#### RIGHTS AND PRIVILEGES.

Rights of the whole body of laity.

It may probably be laid down that all persons, without distinction, whether members of the Church or not, have the legal rights first, to be present at and to join in the ordinary daily services—that is to say, the Morning and Evening Prayers, the Litany, and the Communion Service, up to and exclusive of

(*d*) "The Book of Common Prayer, with Notes," by A. J. Stephens, pp. 1061.



the administration of the Holy Communion; and, secondly, to be baptized and married by ordained ecclesiastics and in accordance with the authorized forms of the Church. This also extends, thirdly, to burial, with the exception of suicides and excommunicates, and, as has already been shown, the term is to be restricted to and includes only such as have been excommunicated by the sentence of a competent tribunal. Fourthly, as to the Holy Communion, only those persons who have been baptized and are either actually confirmed or ready and desirous to be confirmed, and moreover are under no disqualification, have equally the right to participate herein, but all such persons have this right. (e)

These rights of the ordinary laity are, so to speak, purely passive, and can be enforced, not by physical acts and proceedings taken by them upon the spot, but only through the intervention of the established tribunals.

But the powers of the churchwardens are not so limited.

Powers of churchwardens. First, as to the sacred building;

First. They have the general custody of the sacred edifice, subject, however, to the directions of the incumbent. "The minister has in the first instance the right to the possession of the key, and the churchwardens have only the custody of the church under him." (f)

In *Dewdney v. Good & Ford*, (g) and in *Ritchings v. Corringley*, (h) a churchwarden acting *proprio motu*, and without other authority, broke open the door of the church, and in each case he was censured and condemned in costs. In the former case he was also ordered to give up a duplicate key.

They have no authority whatever in respect of a private

(e) "The Book of Common Prayer, with Notes," by A. J. Stephens, p. 1060-1; and see ante, pp. 116-7.

(f) Per Sir John Nicholls in *Lee v. Matthews*, 3 Hagg. Eccl. 173.

(g) 7 Jur. (N. S.) 673.

(h) L. R. 3 Adm. & Eccl. 113. The facts of this and the last case are given fully, *post*, in part ii. chap. iii. "Faculties," sect. 2. See also *Bishop St. David's v. De Rutzen*, 7 Jur. (N. S.) 884.

proprietary chapel, even though a duly licensed clergyman officiates therein. (i)

Their control extends to the churchyard or other consecrated ground attached to a church, and therefore no tomb may be erected there but by their consent. (k)

secondly, as to  
pews ;

Secondly. They have the general control and appropriation of the pews and other seats. The distribution of seats in the parish church rests with the churchwardens, as the officers of and subject to the control of the ordinary. Neither the minister nor the vestry have any right whatever to interfere with the churchwardens in seating and arranging the parishioners, as is often erroneously supposed ; at the same time, the advice of the minister, and even sometimes the opinions and wishes of the vestry, may be fitly invoked by the churchwardens, and, to a certain extent, may be reasonably deferred to in this matter. The duty of the churchwardens is to look to the general accommodation of the parish, consulting, as far as may be, that of all the inhabitants. The parishioners have, indeed, a claim to be seated according to their rank and station, but the churchwardens are not, in providing for this, to overlook the claim of all the parishioners to be seated if sittings can be afforded them. (l)

In the allotment of pews the churchwardens must use a just discretion. If they exercise that discretion improperly the ordinary will set them right, after hearing all parties. (m)

As to the privileges of the incumbent in this respect, it seems that beyond the rights which as an individual member of the

(i) *Bosanquet v. Heath*, 9 W. R. 35.

(k) *Bardin v. Calcott*, 1 Hagg. Cons. 14.

(l) See the Judgment of Sir John Nicholl in *Fuller v. Lane*, 2 Add. 41. As to the power of churchwardens to remove a person from a pew appropriated to or occupied by another see *Spry v. Hood*, 2 Curt. 357 ; *Blake Osborne*, 3 Hagg. Eccl. 726, 734.

(m) *Wyllie v. Mott & French*, 1 Hagg. Eccl. 28, 33 ; *Reynolds v. Monkton*, 2 Moo. & Rob. 384. See *Stocks v. Booth*, 1 T. R. 428.

estry and the consideration which his station and influence in the parish actually give him, the incumbent of a parish has no authority in seating and arranging the parishioners. He may properly object to a plan which is inconvenient and affects the accommodation of his congregation, but as to the mere arrangement of seats, if the parishioners can settle that among themselves and to their own satisfaction, and can agree about the expense, there is but little necessity for the interference of the incumbent. It is not the minister, but the vestry which appropriates the seats. The general superintendence and authority in allotting them rests with the ordinary. (*n*)

Thirdly. As to the bells, the 88th Canon provides that the churchwardens shall take care that the bells be not rung at improper times.

thirdly, as to the bells ;

This control is, however, as has already been seen, (*o*) subject to the supervision of the minister.

Fourthly. They have the power and are under the duty to preserve order and decorum during the conduct of the services. (*p*) The following canons relate to this matter : (*q*)—

fourthly, as to preserving order and decorum.

19. "The Churchwardens or Questmen, and their assistants, shall not suffer any idle persons to abide either in the Churchyard or Church Porch, during the time of Divine Service or preaching; but shall cause them either to come in or to depart."

85. "The Churchwardens or Questmen shall take care and provide that the Churches be well and sufficiently repaired, and so from time to time kept and maintained, that the windows be well glazed, and that the floors be kept paved, plain, and even, and all things there in such an orderly and decent sort, without dust or anything that may be either noisome or unseemly, as becomes

(*n*) *Tattersall v. Knight*, 1 Phill. 232. Compare *Parham v. Templar*, Phill. 515, 520.

(*o*) See *ante*, p. 267.

(*p*) *Burton v. Henson*, 10 M. & W. 105; *Worth v. Terrington*, 13 M. & W.

81.

(*q*) See also 1 Mar. sess. 2, c. 3, *post*, part iii. chap. ii.

the House of God, and is prescribed in an Homily to that effect. The like care they shall take, that the Churchyards be well and sufficiently repaired, fenced, and maintained with walls, rails, or pales, as have been in each place accustomed, at their charges unto whom by law the same appertaineth; but especially they shall see that in every meeting of the congregation peace be well kept; and that all persons excommunicated and so denounced be kept out of the church."

90. "The Churchwardens or Questmen of every Parish and two or three more discreet persons in every parish to be chosen for Side-men or Assistants by the Minister and Parishioners, if they can agree (otherwise to be appointed by the Ordinary of the Diocese), shall diligently see that all the Parishioners duly resort to their Church upon all Sundays and Holy-days, and there continue the whole time of Divine Service; and none to walk or stand idle or talking in the Church, or in the Churchyard, or in the Church-porch during that time. And all such as shall be found slack or negligent in resorting to the Church (having no great or urgent cause of absence), they shall earnestly call upon them; and after due monition (if they amend not), they shall present them to the Ordinary of the place. The choice of which persons, viz. Churchwardens or Questmen, Side-men or Assistants, shall be yearly made in Easter week."

111. "In all visitations of Bishops and Archdeacons, the Churchwardens or Questmen and Side-men shall truly and personally present the names of all those which behave themselves rudely and disorderly in the Church, or which, by untimely ringing of bells, by walking, talking, or other noise, shall hinder the Minister or Preacher."

#### DUTIES OF THE LAITY.

Duties of the laity as to observing order;

All persons attending Divine Service must observe order and decorum while there; (*r*) and this applies equally to those who

(*r*) Canon. III.



are in the immediate vicinity of the consecrated building during the conduct of worship. (*s*)

Several statutes were passed at different periods, to provide for the observance on the part of the laity of a proper behaviour during Public Worship. In consequence, the Ecclesiastical Courts acquired the cognizance of "brawling," that is, the offence of disturbing public worship; (*t*) but their jurisdiction in this respect was, as far as the laity are concerned, abolished by the Stat. 23 & 24 Vict. c. 32. (*u*)

Various enactments,—some legal, others purely ecclesiastical,—have been made for securing the regular attendance of the laity at worship; and several of these still remain on the national records, though shorn of much of their importance by the abolition or the practical disappearance of the penalties imposed.

as to attendance at Divine Worship.

The 19th Canon provides that the Churchwarden and Sidesmen shall see that their fellow-parishioners regularly attend church. The Stat. 5 & 6 Edward VI. c. 1, enacts, by section 1: "All persons shall diligently and faithfully (having no lawful or reasonable excuse to be absent) endeavour themselves to resort to their parish church or chapel accustomed, or upon reasonable let thereof to some usual place where Common Prayer and such service of God shall be used in such time of let, upon every Sunday and other days ordained and used to be kept as Holidays, and then and there to abide orderly and soberly during the time of the common prayer, preaching, or other service of God, in pain of punishment by the censure of the Church."

Section 2. "And for the due execution hereof, the king's most excellent majesty, the lords temporal, and all the commons in this present Parliament assembled, do, in God's name, require and charge all the archbishops, bishops, and other ordinaries, that

(*s*) Canon 90, *ante*, p. 270.

(*t*) See cases cited in the notes on pp. 268-9.

(*u*) Given *post*, part iii. chap. ii.

they shall endeavour themselves, to the utmost of their knowledges, that the due and true execution thereof may be had throughout their dioceses and charges, as they will answer before God for such evil and plagues wherewith Almighty God may justly punish his people for neglecting this good and wholesome law."

Section 1 of 9 & 10 Vict. c. 59, (x) provides, "That no pecuniary penalty shall be imposed upon any person for him so absenting himself as aforesaid," *i.e.* as enjoined by 5 & 6 Ed. VI. c. 1.

Duties of  
churchwardens.

The duties of churchwardens are complementary and collateral to their rights. The latter in most if not in all cases imply the former. Thus, they not only possess rights in connection with the fabric and furniture of the church, and with the preservation of order therein, and with the appropriation of pews, but they are also *e contrario* under the duties corresponding thereto. But their duties extend further. They must keep accounts, and produce them when required for proper purposes. (y) They must keep the footpaths and fences of the churchyard in proper order. (a)

If they are wilfully disobedient, and neglect to take all the clearly legal means in their power to do any particular which is within their duty, *e.g.* to have the church repaired, a criminal proceeding may properly be instituted against them. (b) But to sustain a criminal proceeding against churchwardens, there must be some wilful disobedience or neglect. Refusing to agree to the report of a committee appointed to consider what repairs were necessary (the church being out of repair), and refusing to sign a contract for such repairs, were held not sufficient to sup-

(x) "An Act to relieve Her Majesty's subjects from certain Penalties and Disabilities in regard to religious opinions."

(y) *Watney v. Lambert & Simpson*, 4 Hagg. Eccl. 84.

(a) *Walter v. Montague*, 1 Curt. 253, 260.

(b) *Millar & Simes v. Kilby & Palmer*, 1 Curt. 540; affirmed on Appeal to Arches Court, *ibid.* 550.

port a criminal proceeding, since it did not appear that the churchwardens had been guilty of a dereliction of duty, and no particular acts binding on them which they had failed to perform being stated, they were dismissed from the suit. Dr. Lushington, however, said that if an affidavit stating that the church was out of repair and of the order of the ordinary, directing them to repair the church, were produced, he would grant a monition to show cause why they did not take steps to repair the church as directed. (c)

(c) See *ibid.* p. 548.



PART II.

THE MEANS FOR SECURING THE DUE  
HOLDING AND CONDUCT OF  
PUBLIC WORSHIP.

CHAPTER I.

ECCLESIASTICAL REMEDIES AND  
PUNISHMENTS.

SECTION I.—*General Notice.*

Ecclesiastical  
remedies.



THE remedies given on account of, or as being incidental to infringements or breaches of Ecclesiastical Law may be thus tabulated :—

I. Applications to the ordinary, calling for his interference.

II. Proceedings before the tribunals having jurisdiction in respect of the matters complained of, which proceedings will take either (a) a civil, or (b) a criminal form.

III. Applications in respect of faculties.

IV. Proceedings taken in accordance with and under the provisions of particular statutes, of which the two most important are :

(a) The Church Discipline Act, 3 & 4 Vict. c. 86.

(b) The Public Worship Regulation Act (1874), 37 & 38 Vict. c. 85. (*d*)

These various proceedings will be considered successively in

(*d*) See also 1 & 2 Vict. c. 106.

Ecclesiastical  
penalties.



the following chapters. Here it will be convenient to notice the various penalties within the power of the Ecclesiastical Courts to inflict, in order to prevent the breach, or the repetition or continuance of a breach, of Ecclesiastical Law. These penalties are the following :—First, those to which both clergy and laity (the laity, however, are rather theoretically than actually subject to them), are subject, viz. :—

1. Which affect both clergy and laity.

1. Monition or admonition ;
2. Penance ;
3. Suspension *ab ingressu ecclesiæ* ;
4. Excommunication.

Secondly, those which concern the clergy only, viz. :—

2. Which affect clergy only.

5. Suspension, either (a) *ab officio* only, or (b) *ab officio et a beneficio* ;
6. Sequestration of the cure or benefice ;
7. Deprivation ;
8. Degradation.

Thirdly, certain anomalous penalties which concern both the clergy and laity, but more especially the former, viz. :—

3. Anomalous penalties.

9. The grant or refusal of faculties ;
10. Punishment for contempt of court ;
11. Costs.

## SECTION II.—*Penalties to which both Clergy and Laity are amenable.*

### 1. *Monition or Admonition.*

**T**HE term “admonition,” as here employed, does not bear its ordinary meaning, and that which it has in the Ordination Service, where both priests and deacons promise to “reverently obey their ordinary and other chief ministers . . . following with a glad mind and will their godly admonitions.”

Monition.

It here denotes the censure or reprimand addressed by an Ecclesiastical Court, to any one within its jurisdiction convicted

of an offence of which it takes cognizance. It is the simplest and lightest of all the punishments, and the one usually inflicted, with or without subsidiary orders, such as to costs and the like, in all cases where the offence is comparatively trivial, or committed in respect of doubtful points of law.

It goes equally against the laity as against the clergy, whenever the courts have jurisdiction over the former. Thus it will be issued to compel churchwardens to keep the sacred edifice in repair; (*e*) to enforce the payment of costs (*f*) and the like; and so, before their jurisdiction in those matters was taken away, to compel payment of alimony (*g*) to bring in testamentary papers, &c. (*h*)

Purposes for  
which moni-  
tions are issued.

The purposes generally for which monitions will be decreed have been thus summarised: "The Ecclesiastical Court will issue a monition not only to enforce its own orders, but also to compel the performance of any act which it may be the duty of those within its jurisdiction—*e.g.*, churchwardens—to perform, and also to restrain the commission of any act which violates the Ecclesiastical Law, *e.g.*, erecting a tombstone without permission of the incumbent of the parish; but the act which the monition requires to be done, must not only be lawful in itself, but such as is in the power and within the authority of the person required to perform it." (*i*)

## 2. *Penance.*

Penance:

This in theory has been the chief and most characteristic of the punishments which Ecclesiastical Courts could inflict; in practice, considering the number of offences to which it is suitable, it is perhaps the rarest. It is specially applicable to

(*e*) *Magnard v. Brand*, 3 Phill. 501; *Miller & Simes v. Palmer & Kilby*, 1 Curt. 548, 549; *Fielding v. Standen & Others*, 2 Curt. 663.

(*f*) *Coates v. Brown*, 1 Add. 351.

(*g*) *Hamerton v. Hamerton*, 1 Hagg. 23; *Greenhill v. Greenhill*, 1 Curt. 462.

(*h*) *Langmead v. Lewis*, 2 Phill. 325.

(*i*) *Miller & Simes v. Palmer & Kilby*, 1 Curt. 545.

such matters as heresy, incest, (*k*) fornication or adultery, (*l*) defamation, (*m*) and generally to the graver legal or moral delinquencies.

Penance is of three kinds: solemn, (*n*) which in point of fact varieties of. was never exacted; public or the ordinary penance, as a punishment when inflicted by a legal tribunal; and private, which is enjoined by the priest. Public penance, however, is now very seldom enforced. "I think it right to say that although in some of these cases public penance has been directed, after considering the subject as carefully as I could, it has appeared to me advisable not to make that a part of my sentence." (*o*)

### 3. *Suspension ab ingressu ecclesiæ.*

This punishment is said to be one to which both the clergy and the laity are subject. In practice, however, it is confined to the latter, for when a clergyman is suspended, it is almost invariably *ab officio* at least. (*p*) The offence for which this penalty is most commonly awarded is that of brawling, (*q*) whether committed within the sacred edifice, (*r*) or external to it, but within the limits of the consecrated ground. (*s*)

The period of suspension is generally of limited duration. Duration of. In *Williams v. Hall* (*t*) and *Lee v. Matthews* (*u*) it was for a week, in *Clinton v. Hatchard* (*x*) it was for one month. The

(*k*) *Blackmore v. Brider*, 2 Phill. 359.

(*l*) 13 Ed. I. st. 4, "Circumspecte agatis." See *Morse v. Morse*, 5 Notes of Cases, 49.

(*m*) *Courtail v. Homfray*, 2 Hagg. Eccl. 1.

(*n*) *Lyndewode*, 339.

(*o*) Per Dr. Lushington in *Woods v. Woods*, 2 Curt. 529.

(*p*) See *Cox v. Goodday*, 2 Hagg. Cons. 138; *Taylor v. Morley*, 1 Curt. 485.

(*q*) *Clinton v. Hatchard*, 1 Add. 96; *Lee v. Matthews*, 3 Hagg. Eccl. 69. By 23 & 24 Vict. c. 32, the jurisdiction of the Ecclesiastical Courts with respect to brawling is abolished, as far as the laity are concerned.

(*r*) *Clinton v. Hatchard*, 1 Add. 96.

(*s*) *Williams v. Hall*, 1 Curt. 597, 603; *Lee v. Matthews*, 3 Hagg. Eccl.

175. Compare *Williams v. Goodyer*, 2 Add. 463.

(*t*) *Ubi supra*.

(*u*) *Ubi supra*.

(*x*) *Ubi supra*.

Costs.

sentence usually entails the whole of the costs of the suit, (y) unless special circumstances should arise, *e.g.* the great length of the proceedings. (z)

4. *Excommunication.*Excommuni-  
cation ;

This, considered as an ordinary Ecclesiastical censure, as a matter regulated by the Ecclesiastical Common Law, and apart from the qualifications by statute and the Common Law, is of two kinds, the less and the greater.

nature of.

The latter has been thus described by Sir John Nicholl : “Excommunication in the meaning of the law of the English Church, is not merely an expulsion from the Church of England, but from the Christian Church generally. The Ecclesiastical Law excommunicates Papists. The Ecclesiastical Law excommunicates Presbyterians. Dissenters of all descriptions from the Church of England are liable to excommunication. But what is meant by the Church of England by the term of excommunication, can be best explained by the articles of that Church. By the 33rd Article, it is expressly stated : ‘That person which by open denunciation of the Church is rightly cut off from the unity of the Church and excommunicated, ought to be taken of the whole multitude of the faithful as an heathen and publican, until he be openly reconciled by penance, and received into the Church by a judge that hath authority thereunto.’ That is, he is no longer to be considered as a Christian, no longer to be considered as a member of the Christian Church universal, but he is to be considered as an heathen and a publican, for those are the words of the article.” (a)

Excommunica-  
tion *ipso facto*.

In the case *Kemp v. Wickes*, (b) from the judgment in which the above extract is taken, it was decided, that however expressly the Church of England excommunicates (c) certain classes of persons, yet infants baptized by other than clerical hands are

(y) *Clinton v. Hatchard*, *ubi supra* ; *Lee v. Matthews*, *ubi supra*.

(z) See *Taylor v. Morley*, 1 Curt. 485.

(a) *Kemp v. Wickes*, 3 Phill. 271-2.

(b) *Ubi supra*.

(c) It must, however, be considered very doubtful whether there is by the



not "unbaptized" or "excommunicate" within the meaning of the Burial rubric, as was pointed out later on in the above judgment: (d) "It is to be observed, that in this Canon and in this rubric there is nothing that expressly interdicts the Burial Service from being performed for persons 'unbaptized.' The only express exception there is 'persons excommunicate.' It has been ingeniously argued that that amounts to pretty much the same thing; for that the Canons declare those persons to be excommunicate who did not conform, and several Canons to that effect have been noticed. But the 68th Canon only excepts from burial one 'denounced excommunicated majori excommunicatione for some grievous and notorious crime, and no man able to testify of his repentance.' Now, an infant baptized by a Presbyterian minister, or by a layman, would surely not have come within this exception; and therefore, during the reigns of King James and King Charles I., this being the only exception to be found in the Canon, a minister would certainly have violated the Canon by refusing to bury a person so baptized, unless that person came within the general description of not being a Christian at all."

The lesser excommunication is in the depriving the offender of the use of the Sacraments and Divine Worship; and this sentence is passed by judges ecclesiastical on such persons as are guilty of obstinacy or disobedience, in not appearing upon a citation, or not submitting to penance, or other injunctions of the Court. (dd)

Lesser excommunication.

The law relating to excommunication has been very materially affected by two modern statutes.

Present law as to excommunication.

Ecclesiastical or the Common Law any excommunication save that which has been decreed by the sentence of a competent tribunal, *Mastin v. Escott*, 2 Curt. 692, 4 Moore, P. C. C. 104. The expression "excommunicate *ipso facto*" is often used, but its correctness may be questioned except as applied to suicides, perhaps to Papists, and to the acts forbidden by 5 & 6 Ed. VI. c. 4, s. 2. See *Titchmarsh v. Chapman*, 3 Curt. 864.

(d) 3 Phill. 296.

(dd) See generally as to excommunication, Johnson's Collection of the Canons, &c. (Parker, 1850).

53 Geo. III.  
c. 127.

The former of these—53 George III. c. 127—enacts, in section 1, that excommunication with all, together with its consequences, shall be discontinued,—reserving, however, to the Ecclesiastical Courts the power of signifying any contempt which shall have been committed against them; thus a writ de contumace capiendo will issue, returnable in like manner as a writ de excommunicato capiendo did before the passing of the above statute. The second section of that statute enacts “that it shall not prevent any Ecclesiastical Court from pronouncing or declaring persons to be excommunicate in definitive sentences, &c., in the same manner as such Court might have done had the Act not been passed.” The third section enacts “that the only penalty or incapacity consequent upon such contempt shall be imprisonment for not more than six months, or until the offender shall be absolved by the Ecclesiastical Court.”

2 & 3 Will.  
IV. c. 93.

The latter is 2 & 3 Will. IV. c. 93, and is styled, “An Act for enforcing the Process upon Contempts in the Courts Ecclesiastical of England and Ireland.” Its provisions are mainly to render persons resident or domiciled, or having estates within the United Kingdom, but beyond the jurisdiction of a particular court, amenable to process issued from such Court.

### SECTION III.—*Punishments limited to Clerical Offences.*

#### 5. *Suspension either (a) ab officio merely or (b) ab officio et a beneficio.*

Suspension.

**T**HIS in either form is an inhibition of a person having the cure of souls from performing any of the duties pertaining to his office. It may not be inflicted without a previous admonition, unless the offence is such as, from its peculiar nature, calls for immediate suspension. (e)

The clergyman so suspended is not entitled, even though a

(e) Gibson's Codex, 1046.

sequestration has not been issued, to recover any profits of which  
 was, by the sentence of suspension and during its continuance,  
 withheld. (f) These belong to the bishop, even though no  
 sequestration has been issued, and *a fortiori* when this is  
 one. (g)

Profits of  
benefice.

A suspension, when *ab officio* merely, is usually followed by  
 sequestration, so as to provide for the performance of the Ser-  
 vices while the suspension lasts. (h)

If the suspended clergyman preaches or performs any other  
 clerical function while the sentence is in force, he is guilty of  
 contempt; (i) and, according to the strict Canon Law, he is  
 liable to excommunication, as is also every person who com-  
 municates with him. (k)

Punishment of  
a suspended  
clergyman  
when in con-  
tempt.

“A sentence of suspension *ab officio et a beneficio* is a sentence  
 of degradation and deprivation, but both in a qualified sense be-  
 cause only temporary; but it did operate as a temporary degra-  
 dation and deprivation.” These are the words of the Court of  
 Common Pleas, (l) referring to Bishop Gibson. But that learned  
 writer himself is more explicit, his exact expressions being,  
 “That which relates solely to the clergy is suspension *ab officio*  
*et beneficio* jointly; or *ab officio* or *beneficio* singly; and may be  
 called a temporary degradation or deprivation, or both.” (m)  
 Between the two, *i.e.* suspension and deprivation, there is this  
 difference, that the former may be pronounced by the chancellor  
 of the diocese, the latter by the bishop alone. All chancellors  
 can suspend; the Dean of Arches can even deprive, but he alone  
 of all ecclesiastical judges is vested with this power. (n)

Who can sus-  
pend;

and deprive.

(f) *Morris v. Ogden*, L. R. 4 C. P. 687, 702; *Bunter v. Cresswell*, 14  
 B. 825, 19 L. J. (Q. B.) 687, 3 Jur. 864.

(g) *Re Thakeham Sequestration Moneys*, L. R. 12 Eq. 494.

(h) See *Bunter v. Cresswell*, *ubi supra*; *Morris v. Ogden*, *ubi supra*.

(i) *Bishop of London v. Day*, 1 Rob. Eccl. 724; *Hebbert v. Purchas*,  
 1 R. 4 P. C. 301, 312. See *Trower v. Hurst*, 5 Notes of Cases, 165.

(k) Gibson's Codex, 1047.

(l) L. R. 4 C. P. 702.

(m) Codex, 1047.

(n) 1 Phill. 277.



It is important to remember that suspension may be not only from the performance of clerical functions, but also from the receipt of clerical emoluments. The latter penalty, in practice if not in theory, invariably entails the former. Bishop Gibson, however, as has just been seen, says not, or at least he implies not, since he indicates three varieties of suspension, the last being *a beneficio* only. But probably no instance of the latter is to be found in the books.

Suspension—  
for what causes  
inflicted.

Suspension is the punishment generally awarded for profligate habits or conversation, and is usually for a period of sufficient duration to probably secure an improved course of life. (o) It is, however, by no means restricted to such offences. In *Martin v. Mackonochie*, (p) upon an application to the Privy Council to enforce a monition issued by them against Mr. Mackonochie, (q) but which he had disobeyed, they ordered that he should be suspended for three months from the discharge and execution of all the functions of the clerical office. Again, in the still more recent cause of *Hebbert v. Purchas*, the defendant having disobeyed a monition of the Privy Council, was suspended for one year *ab officio*; (r) and having subsequently thereto and notwithstanding such suspension continued to officiate, he was suspended for another year *ab officio et a beneficio*. (s)

(o) In *Dickes v. Huddesford*, 1 Phill. 278 n, for two years; in *Watson v. Thorp*, 1 Phill. 269, for three years.

(p) L. R. 3 P. C. 409.

(q) See *ante*, pp. 180, 181.

(r) L. R. 4 P. C. 306-8.

(s) L. R. 4 P. C. 311, 312. Instances of proceeding by monition for contempt, and of suspension, and deprivation by the Ecclesiastical Courts and the Court of Delegates are to be found in a "Return of Appeals in causes of Doctrine or Discipline made to the High Court of Delegates from its erection by 35 Hen. VIII. c. 19, A.D. 1533, until its abolition by the 2 & 3 Will. IV. c. 92, A.D. 1832," ordered by the House of Commons to be printed, 3rd of April, 1868. P. P. No. 199; Nos. 2, 10, 13, 15, 16, 30, 47, 48, 50, 59, 63, 73, 80, 93, 96, 98, 104, 105, 134, 135, 136, and 178; *ib.* pp. 2 to 100. The powers of the High Court of Delegates were



### 6. *Sequestration.*

This is the taking possession of a benefice and appropriating the rents and profits arising therefrom to other uses and in other ways than those of the incumbent directly, first making provision for Public Worship. The process, in its original form, was strictly an Ecclesiastical and not a Common Law remedy. It must not be forgotten that while the Common Law remained unaltered the king never claimed any authority to take possession of ecclesiastical rights or dues by the hands of his own ministers, the sheriffs. He was always obliged to have recourse to a writ to the bishop under which the lands were sequestered. Under that writ possession was not given, but the ordinary was bound to take care that out of the revenues of the church the duties of the church should be provided for. (t) Coke also observes to the same effect: "If a person be bound to a recognizance in the chancery or in any other court, &c. and he pay not the sum at the day, by the common law, if the person had nothing but ecclesiastical goods the recognizee could not have had a *levari facias* to the sheriff, the levy the same of those goods, but the writ ought to be directed to the bishop of the diocese to levy the same of his ecclesiastical goods. (u)

As to the jurisdiction in this behalf the Ecclesiastical Commissioners have said:—"Sequestrations are issued under the following circumstances:—First, in obedience to writs from the Courts

transferred to Her Majesty in Council by the 3 & 4 Will. IV. c. 92, s. 3. The power of Her Majesty in Council, acting by the advice of her Judicial Committee, to punish contempts, and to enforce judgments, decrees, or orders, is specially given by 2 & 3 Will. IV. c. 41, s. 28, and subsequently in causes ecclesiastical and maritime by the 6 & 7 Vict. c. 38,

7.

(t) Per Ld. Alvanley in *Arbuckle v. Cowtan*, 3 Bos. & Pull. 321, 327. See also s. 88 of the "Bankruptcy Act, 1869," 32 & 33 Vict. c. 71.

(u) 2 Inst. 4.

of Common Law, whereby the bishop is directed to levy certain sums in pursuance of the statutes regulating Queen Anne's Bounty; secondly, under the various provisions contained in the Statute 1 & 2 Vict. c. 106 (which has repealed 57 Geo. III. c. 99), and in cases of outlawry; and thirdly, in pursuance of decrees emanating from the Ecclesiastical Courts, where clergymen are proceeded against for offences within those jurisdictions; and lastly, during vacancies of benefices. In all these cases the law is clear, that before any proportion of the profits of the benefice can be applied in payment of debts or for any other purpose, the service of the church must first be provided for out of those profits, and when that has been done the building and fences in the glebe, and the chancel also, when the incumbent repairs, ought to be sustained and kept in order. The right of nominating the sequestrator lies with the bishop, but when the sequestration issues on account of debts it may often happen that the sequestration is committed to the creditor or his nominee; in all other cases the bishop exercises his right of nomination by selecting according to his own judgment." (x)

Two kinds of  
sequestration :  
civil,

Sequestrations have two distinct characters, a civil and a criminal one. They may be issued as an ordinary civil process, and as being the Ecclesiastical analogy of a Common Law execution, to obtain payment of costs, (y) or alimony, (z) or of any other sum awarded by the judgment of a competent tribunal, (a) to enforce the payment of debts arising under ordinary circumstances, (b) to recover for dilapidations, (bb) or as the result of bankruptcy proceedings. (c) Or they may be decreed as punish-

or criminal.

(x) Report of Ecclesiastical Commission, p. 52.

(y) *Hebbert v. Purchas*, L. R. 4 P. C. 308.

(z) See *Morse v. Morse*, 5 Notes of Cases, 49.

(a) See *Bunter v. Cresswell*, 14 Q. B. 825, 3 Jur. 864; and *Hopkins v. Clarke*, 5 B. & S. 753, 33 L. J. (Q. B.) 93, 334.

(b) See *Bluck v. Hodgson*, 5 Notes of Cases, 167.

(bb) 1 & 2 Vict. c. 106, ss. 67, 69, and 34 & 35 Vict. c. 43.

(c) See 32 & 33 Vict. c. 71.

ment for canonical offences, such as immorality, (d) non-residence, (e) allowing unordained persons to officiate, (f) intemperate conduct, and the like.

If there be two sequestrations, a civil and criminal one, existing at the same time, no matter which is the prior in date, the latter will as long as it continues in force oust the former.

A criminal ousts a civil sequestration.

In *Bunter v. Cresswell*, (g) where this question arose, a writ of *exequstrari facias* had been issued at suit of a creditor against the defendant; and subsequently thereto, while the creditor's claim remained unsatisfied, the bishop, acting under the Church Discipline Act, suspended the defendant and sequestered his living. In deciding that the bishop was entitled under the later writ to the profits of the living, the Court of Queen's Bench made the following remarks, which are important as determining the exact nature and effect of a suspension: "The question for our consideration is substantially what effect, if any, this sequestration has upon that previously in operation; and that question must depend for its answer upon the nature and effect of the judgment of suspension. It was not contended that the previous sequestration, issued under the authority indirectly of this Court, took away from the Court Christian the jurisdiction to suspend, or from the bishop the power and duty to issue the second sequestration in execution of that sentence; but that, to the extent of the 'ecclesiastical goods,' to which it applied, it took them out of the incumbent as to prevent the second sequestration from operating upon them. And, as the first writ is in effect in terms as large as the second, if this argument can be sustained, it must render the second wholly inoperative, until the judgment in respect of which it issued be satisfied."

*Bunter v. Cresswell.*

The Court then pointed out the effect of the writ first issued

(d) *Watson v. Thorp*, 1 Phill. 269.

(e) By virtue of 1 & 2 Vict. c. 106, s. 54. See *Bartlett v. Kirwood*, 2 E. & B. 771.

(f) By virtue of 3 & 4 Vict. c. 33, s. 4.

(g) 14 Q. B. 825, 19 L. J. (Q. B.) 687, 3 Jur. 864.

upon the status of the incumbent, and, in the following words, decided that he still remained such and in possession of his benefice :—

A vicar notwithstanding sequestration remains vicar.

“ But we apprehend it is clear that the defendant remained vicar after the first writ was published ; the vicarage was full of him ; he might have been deprived of it, he might have resigned it, both which suppose a previously existing possession in some sense ; nor could it be disputed that in either of these events the title and the possession of the sequestrator, or rather, the bishop, under the first writ would have determined.”

The Bishop always entitled to the profits.

The Court next determined that the suspended clerk is *pro tempore* amoved from his benefice, and that the rights of all persons claiming by or through him are for the time also suspended ; and consequently that the bishop is, during such period, entitled to the receipts therefrom :—“ If, however, any one, who in any sense claims under the suspended clerk, can claim to receive the fruits and profits of the benefice, two inconveniences will follow : First, they are withdrawn from the object for which they were primarily bestowed—the due maintenance of him who performs the duties and bears the burthens of the cure. The Church being for the time in substance deprived of its minister, it is cast upon the bishop to provide for the temporary vacancy ; and to enable him to do so, he is to receive the profits, not, as when he receives them in the execution of a writ from a temporal court, as a sort of sheriff, with a liability to account to the court for his receipts, but in virtue of his office of chief pastor, responsible to no one, so long as the church is properly supplied. But this he cannot do, if the funds for the maintenance of the minister may be kept from him by any prior execution or incumbrance. Secondly. The very end of the sentence will be frustrated. In considering the principles which must govern this, the statutes which prevent the charging of benefices by incumbents, which do not indeed operate against executions or judgments, may be laid out of view ; if the incumbrancer, whether in the capa-



ity of creditor or any other, may maintain his claim against the bishop, the suspended incumbent in effect is the receiver of the profits; either his debt is paid thereby, or his grantee is receiving the fruits of his grant, but both in virtue of his right; so that his right must be held to exist at the very time when, by the sentence, it has been taken away.

“We cannot therefore agree in placing the parties, the plaintiffs on the one hand and the bishop on the other, as the counsel for the plaintiffs felt compelled to do, in the relation of contending incumbrancers, whose rights, *inter se*, were to be determined by priority of date; it appears to us that if the plaintiffs can maintain their right now, they could equally do so if they were posterior in the date of their charge, because the only foundation on which they can stand is on the existence of such an interest in the incumbent after suspension as would be available to answer the writ of execution; and whether it came earlier or later, the writ would attach on this, as if it were in existence.

“No direct authority was furnished us in the argument, nor have we been able to find any. We have been compelled, therefore, to decide this case upon principle; and it seems to us that, in principle, it is clear that the suspension, for the time of its endurance, operates in respect of the perception of the profits, as motion or death; that the plaintiffs’ right, therefore, is suspended from the 13th September, 1846, the date of publication of the second sequestration. Nor is there any hardship in this. Every creditor of a beneficed clergyman knows that his recourse to the ecclesiastical goods of his debtor is of a limited nature, determinable by his death, resignation, or amotion; and such as it is, it is in addition to the same absolute recourse to his lay goods and lands as the creditor has against a layman.”

The “Sequestration Act, 1871,” (*h*) contains the following provisions :—

Sequestration  
Act, 1871.

On sequestration bishop to appoint curate and assign stipend, as defined in 34 & 35 Vict. c. 44.

“1. Where, after the thirty-first day of August one thousand eight hundred and seventy-one, under a judgment recovered against the incumbent of a benefice as defined in the Incumbents Resignation Act, 1871, or under the bankruptcy of such incumbent, a sequestration issues and the same remains in force for a period of six months, the bishop of the diocese shall from and after the expiration of such period of six months, and as long as the sequestration remains in force, take order for the due performance of the services of the church of the benefice, and shall have power to appoint and license for this purpose such curate or curates, or additional curate or curates, as the case may require, with such stipend in each case as the bishop thinks fit, the amount thereof to be specified in the licence, and the bishop may at any time revoke any such appointment and licence: Provided always, that such stipend or stipends shall not exceed in the whole the following sums; that is to say, if the population shall not exceed five hundred, the sum of two hundred pounds yearly; if the population shall exceed five hundred but not one thousand, the sum of three hundred pounds yearly; if the population shall exceed one thousand but not three thousand, the sum of five hundred pounds yearly; if the population shall exceed three thousand, the sum of six hundred pounds yearly: Provided also, that such stipend or stipends shall not exceed in the whole two-thirds of the annual value of the benefice as defined in the last-mentioned Act.

Application of enactments in Schedule, Part I.

“2. Such of the provisions of the Act specified in the schedule to this Act as are described in Part I. of that schedule and all provisions of that Act relative thereto shall have effect for purposes of this Act as if they were here re-enacted.

Payment of stipend.

“3. Every stipend assigned under this Act shall be paid by the sequestrator out of moneys coming to his hands under the sequestration, as long as the sequestration is in force, in priority to all sums payable by virtue of the judgment or the bankruptcy under which the sequestration issues, but not in priority of liabilities in respect of charges on the benefice.

“ 4. Such of the provisions of the Act specified in the schedule to this Act as are described in Part II. of that schedule, and all provisions of that Act relative thereto, shall apply in every case where a curate is appointed under this Act.

Application of enactments in Schedule, Part II.

“ 5. In case any such sequestration remains in force for more than six months, the bishop, if it appears to him that scandal or inconvenience is likely to arise from the incumbent continuing to perform the services of the church while the sequestration remains in force, may, from and after the expiration of such period, inhibit the incumbent from performing any services of the church within the diocese as long as the sequestration shall remain in force, and the bishop may at any time withdraw such inhibition.

Power for bishop to inhibit in certain cases.

“ 6. During such time as any sequestration remains in force, the incumbent shall be absolutely disabled from presenting or nominating to any benefice then vacant, of which he may be patron in right of the benefice under sequestration, and the right of presentation or nomination to such vacant benefice shall be exercised by the bishop of the diocese in which such vacant benefice is locally situate.

Presentation to benefices suspended during sequestration.

“ 7. During the continuance of any sequestration it shall not be lawful for the incumbent of the benefice under sequestration to accept or be instituted or licensed to any other benefice or preferment, the acceptance of or institution or licensing to which would avoid or vacate the benefice so under sequestration, unless with the consent in writing of the bishop of the diocese and the sequestrator.”

Incumbent of sequestrated benefice not to accept other benefice but with leave.

### *7. Deprivation.*

Between suspension from preferment and deprivation or deposition, the line of distinction is very fine. Probably it consists in this only, that the latter is the term to be used when the suspension is absolute and *in perpetuum*. Lyndewode thus indicates the difference: “*Depositus dicitur qui privatus est beneficio*

Definition of Deprivation.



et officio, licet non solenniter. . . . Degradatus dicitur qui utroque est privatus solenniter, insigniis sibi ablatiis. . . . Suspensus autem dicitur qui est privatus utroque ad tempus non in perpetuum. Secundum quosdam differentia est inter depositionem et suspensionem, sicut inter deportationem, quæ est perpetua, et relegationem, quæ est temporalis." (i)

Deprivation :  
when inflicted.

It is manifestly a very severe sentence, whether viewed in its spiritual or secular aspects. Consequently it is inflicted only when the gravity of the circumstances demands some stronger punishment and means of repression than those hitherto mentioned. The following are the chief groups of cases where it has been or is now awarded.

1. For disabilities.

First. Disqualification for clerical functions. These are—Want of Age, (k) Want of Education, (l) or Want of Orders. (m)

Under this same head may be put Simony, which is a crime by the common law, and which causes the avoidance of all preferments so obtained. (n) So also Infidelity, Blasphemy, and the like, which have always been, (o) and still are, (p) punished with deprivation. (q) And not merely absolute Atheism, but the maintenance of any doctrine contrary to the Thirty-nine Articles is sufficient. "If any person ecclesiastical, or which shall have ecclesiastical living, shall advisedly maintain or affirm any doctrine directly contrary or repugnant to any of the said articles, and being convented before the bishop of the diocese or the ordinary, or before the queen's highness' commissioners in causes ecclesiastical, shall persist therein, or not revoke his error, or after such revocation eftsoon affirm such untrue doc-

13 Eliz. c. 12,  
s. 2.

(i) Constitutio Othonis Lyndw. p. 45, De concubinis clericis removendis.

(k) 13 Eliz. c. 12, avoids admissions, &c., contrary to the statute; see Gibson, 1068.

(l) See Hobart, 149.

(m) See 13 & 14 Car. II. c. 4, s. 10.

(n) 31 Eliz. c. 6.

(o) Gibson, 1068; *Specot's case*, 5 Rep. 24.

(p) *Noble v. Voysey*, L. R. 3 P. C. 357.

(q) The jurisdiction of the Ecclesiastical Courts in these matters is preserved by 29 Car. II. c. 9, which took away the writ *de heretico comburendo*.



trine, such maintaining or affirming and persisting, or such oftsoon affirming, shall be just cause to deprive such person of his ecclesiastical promotions, and it shall be lawful to the bishop of the diocese, or the ordinary, or the said commissioners to deprive such person so persisting, or lawfully convicted of such oftsoons affirming, and upon such sentence of deprivation pronounced, he shall indeed be deprived." (r)

Secondly. Conviction in the temporal courts of certain crimes. Of such convictions, those for treason or felony always were (s) a sufficient ground for deprivation, and now by section 2 of the "Act to Abolish Forfeitures," (t) it is provided "that if any person hereafter convicted of treason or felony, for which he shall be sentenced to death or penal servitude, or any term of imprisonment with hard labour, or exceeding twelve months, shall at the time of such conviction hold any military or naval office, or any civil office, under the Crown or other public employment, or any ecclesiastical benefice, or any place, office, or emolument, in any university, college, or other corporation, or be entitled to any pension or superannuation allowance, payable by the public, or out of any public fund, such office, benefice, employment, or place shall forthwith become vacant, and such pension or superannuation, allowance or emolument, shall forthwith determine and cease to be payable, unless such person shall receive a free pardon from Her Majesty within two months after such conviction, or before the filling up of such office, benefice, employment, or place, if given at a later period."

2. Conviction of crime.

Thirdly. The graver moral offences. The punishment of deprivation is not inflicted under ordinary circumstances, but only when the immoral conduct is of a gross nature, or is accompanied by facts which aggravate it. It has been imposed for incontinence (u) and for drunkenness. (v)

3. Moral offences.

(r) 13 Eliz. c. 12, s. 2.

(s) Hobart, 121.

(t) 33 & 34 Vict. c. 23.

(u) *Bonwell v. Bishop of London*, 14 Moo. P. C. C. 395, 412-4.

(v) *Mortimer v. Freeman*, 1 Brownlow & Gold, 70.

4. Ecclesiastical offences.

Fourthly. Those cases which may be styled breaches of ecclesiastical discipline. Among these will be included the keeping of fasts other than such as are appointed by law; (*x*) officiating after excommunication, without being previously absolved; (*y*) non-payment of tenths according to 26 Hen. VIII. c. 3, s. 15; (*z*) non-residence; (*a*) disobedience to the orders and constitutions made for the government of the Church. (*b*)

Canon 122.

As to the sentence of deprivation, Canon 122 provides: "When any Minister is complained of in any Ecclesiastical Court, belonging to any Bishop of his province, for any crime, the Chancellor, Commissary, Official, or any other, having ecclesiastical jurisdiction, to whom it shall appertain, shall expedite the cause by processes and other proceedings against him; and upon contumacy for not appearing shall first suspend him: and afterwards, his contumacy continuing, excommunicate him. But if he appear and submit himself to the course of law, then, the matter being ready for sentence, and the merits of his offence exacting by law either deprivation from his living or deposition from the ministry, no such sentence shall be pronounced by any person whosoever, but only by the Bishop, with the assistance of his Chancellor, the Dean (if they may conveniently be had), and some of the Prebendaries, if the Court be kept near the Cathedral Church; or of the Archdeacon, if he may be had conveniently, and two, at the least, grave Ministers and Preachers, to be called by the Bishop when the Court is kept in other places."

Dean of Arches may deprive.

It was for some time doubtful as to whether this sentence can be pronounced by an ecclesiastical judge, without the presence or concurrence of a bishop or archbishop; but in *Bonwell v. Bishop of London*, (*c*) the Privy Council, affirming the court below, held that the Dean of Arches can by himself, and *proprio motu*, pronounce a sentence of deprivation. (*d*)

(*x*) Canon 72.

(*y*) Gibson, 1049.

(*z*) See 2 & 3 Ed. VI. c. 20, and 3 Geo. I. c. 10, s. 2.

(*a*) Lynd. 64.

(*b*) See Croke, Jac. 37.

(*c*) 14 Moo. P. C. C. 395, 412-4.

(*d*) See *Burgoyne v. Free*, 2 Hagg. Eccl. 456, per Sir John Nicholl, and

### 8. Degradation.

Degradation.

This is the expulsion of an ecclesiastic from the church, and the depriving him of orders. As this punishment, if indeed it ever existed in England, has died out, it will suffice merely to refer to it.

## SECTION IV.—*Anomalous Punishments.*

**U**NDER this head may be placed certain matters and proceedings which amount to ecclesiastical penalties, although they may not be directly and positively intended to be such.

### 9. Faculties.

Faculties.

Faculties will be considered in chapter iii. of this Part. Here it will suffice to observe that though their primary and main purpose is to sanction and legitimize that which, without such authorization, would be unlawful, yet indirectly and by the result of collateral matters they may be converted into instruments of punishment. Where, for instance, anything has been done, such as the erection of an ornament, for the lawful performance of which a faculty was or is necessary, and a subsequent application is made for the same, the grant of it may perhaps be absolutely refused; (*e*) or, if made, be made subject to onerous terms as to costs, expenses, and the like. (*f*)

### 10. Contempt.

Contempt: definition of.

Under this term is included every matter, act, statement, or proceeding calculated to interfere with the course or proper administration of justice, or the dignity of judicial officers while acting as such. "Every writing, letter, or publication which has

*Kitson v. Loftus*, 4 Notes of Cases, 323, per Sir H. J. Fust; *Hussey v. Radcliffe*, 5 Jur. (N. S.) 1014; *Bishop of Norwich v. Pearse*, L. R. 2 Adm. & Eccl. 281.

(*e*) See *Westerton v. Liddell*, Moore, Special Report.

(*f*) See *Sieweking v. Kingsford & Evans*, 36 L. J. Adm. 1.



Contempt in  
the Ecclesias-  
tical Courts.

for its object to divert the course of justice, is a contempt of the court. Every insult offered to a judge in the exercise of the duties of his office is a contempt." (g) It has, however, been said that in the Ecclesiastical Courts a somewhat different class of offences are denoted by this term. "A notion prevails that a contempt must be some disrespect shown to the Court, and that the imprisonment is in the discretion, and terminable at the pleasure of the judge. This is very erroneous. Contempts are usually incurred by a party's neglect or refusal to do some act which is, in justice, due to the other party in the cause; such as the giving in of answers, the payment of costs, or the like; and the imprisonment which follows is at the prayer of the other party—a prayer to which the Court cannot refuse to accede, without a breach of its duty, and a denial of justice." (h)

Ecclesiastical  
Courts cannot  
commit for con-  
tempt.

"Signifying."

The power to punish by fine and imprisonment for contempt is possessed by all Courts of Record; but the Ecclesiastical Courts not being such cannot do so directly and of their own power, (i) but in such cases they act through the medium of the Court of Chancery. This is done by the ecclesiastical judge "signifying" to the Lord Chancellor the person and his offence, whereupon that judge directs, as a matter of course, the proper proceedings to be taken. It has already been noticed that the statute 53 Geo. III. c. 127, which discontinued excommunication and all proceedings thereon, reserves to the Ecclesiastical Courts the power of pronouncing persons excommunicate as they might have done before the passing of that Act, but confines the consequences of excommunication to six months' imprisonment, or till the offender shall be absolved from his contempt by the Court; and it directs that his contempt shall be "signified" to the Court of Chancery, whereupon the writ de

(g) *Lechmere Charlton's Case*, 2 My. & Cr. 316, 339, per Lord Cottenham; *Queen v. Castro, Onslow & Whalley's Case*, L. R. 9 Q. B. 217.

(h) Per Sir John Nicholl in *Barlee v. Barlee*, 1 Add. 301, 304.

(i) *Hamerton v. Hamerton*, 1 Hagg. Eccl. 24 n.



excommunicato capiendo shall issue, and the imprisonment follow. (*k*)

As to what are the requisites of a significavit, the following points were decided in *Regina v. Thorogood*: (*l*)—

Requisites of a significavit.

1. It is not necessary under statute 53 Geo. III. c. 127, s. 1, that the significavit of contempt from the Spiritual Court should purport to be issued within ten days of the judgment of contempt.

2. In a significavit, after the statement (according to Schedule A to statute 53 Geo. III. c. 127) of the party being pronounced in contempt, these words were added: "In not appearing (as by our citation under the seal of our said Court, duly and personally served upon him, he was required to appear) before, &c." Held that the addition of the parenthetical words was an immaterial variance from the schedule.

3. Assuming that statute 53 Geo. III. c. 127, s. 7, takes away the jurisdiction of the Spiritual Courts in cases of church rate wherein the two justices have jurisdiction, it is not necessary that the citation, significavit, or subsequent proceedings should negative the facts which would give jurisdiction to the justices.

4. Assuming that in a proceeding under statute 53 Geo. III. c. 127, s. 1, the writ de contumace capiendo must contain the addition of the party, as in the case of the de excommunicato capiendo, under statute 5 Eliz. c. 23, s. 13, the omission of it is no ground for discharging the party from an imprisonment for contempt, such imprisonment not being within the words of 5 Eliz. c. 23, s. 13, all and every pains and forfeitures limited against such persons excommunicate by this statute.

In *Regina v. Jones*, (*m*) it was decided that the surrogate of the bishop's official principal is not the proper party to signify

(*k*) See *Baker v. Thorogood*, 2 Curt. 632.

(*l*) 12 Ad. & Ell. 183. See *Regina v. Baines*, *ibid.* 210; and *Re Baines*, 1 Cr. & Ph. 31. (*m*) 10 Ad. & Ell. 576; compare 12 Ad. & Ell. 215.

the contumacy of a defendant in a suit before him as judge of the Consistory Court, and this both before and after statute 53 Geo. III. c. 127, and that consequently where the respondent was taken under a *de contumace capiendo* issued upon such certificate, he was entitled to his discharge, with costs to be paid by the opposite party.

But though it is very necessary that proceedings in the Ecclesiastical Courts should be in due form, and though they cannot themselves commit for contempt, yet the Superior Courts will, as far as possible, refuse to interfere in favour of persons who have not submitted to an Ecclesiastical Court when duly cited. Therefore, where a writ *de contumace capiendo*, under 53 Geo. III. c. 127, purported to have been issued against defendant for not paying a sum of money as costs, according to the monition of the Arches Court, the proceedings being carried on in pain of the contumacy of defendant, duly cited to appear in the cause, &c., with the usual intimation, but not appearing, the Court of Queen's Bench would not discharge him on *habeas corpus*. For a practice of the Ecclesiastical Court to give judgment against a party on such non-appearance may be legal, and if no such practice exist, the party should appeal. (*n*)

The Privy  
Council.

The Privy Council, when sitting as an Ecclesiastical Court of Appeal, have power, both as inherent in their constitution, (*o*) and in virtue of the transfer to them of the jurisdiction possessed by the High Court of Delegates, (*p*) the fullest and most ample power of punishing for contempt. "Their lordships are quite satisfied that there exists in this tribunal, as there did exist in the High Court of Delegates—all the powers of which have been transferred to this Committee—a power of suspension not only *ab officio*, but *a beneficio* also, as a summary punishment for contumacy; and their lordships have arrived at the conclusion

(*n*) *Reg. v. Baines*, 12 Ad. & Ell. 210.

(*o*) See *Barton v. Field*, 4 Moo. P. C. C. 273.

(*p*) 2 & 3 Will. IV. c. 92; 3 & 4 Will. IV. c. 41.

that it is right and proper in a case like the present, where the contumacy is persistent, to direct and order that the respondent be suspended *ab officio et a beneficio* from his chapel of Saint James, Brighton, for the space of one year from the present time." (q)

### 11. Costs.

The payment or the refusal of costs may be regarded in Costs. the light of a punishment. At Common Law costs, with few exceptions, "follow the event;" but in the Ecclesiastical Courts, as in Chancery, this is by no means the necessary result. In the Ecclesiastical Courts it has always been held that costs are a matter for the discretion of the judge, not of capricious discretion, but according to the just consideration of all the circumstances of the case. It is the duty of courts, on the one hand, to protect parties in the fair assertion of their just and legal rights, and, on the other hand, to check vexatious litigation. (r) Nevertheless, though this may be considered a correct exposition of the general rule, yet, at least in civil causes, a litigant party has, on proving his case, *prima facie*, a right to the expenses to which he has been put by the injustice of the other party. But even here costs are a matter of discretion, in which many things are to be taken into consideration, and the Court may under circumstances relax the rule. (s)

As to the nature of the "discretion" of a court or judge in this respect, it may be stated that the expression, "the Court may use its discretion in respect to costs," must be understood to mean not that it is in the power of the Court to give or withhold costs as it pleases, but that costs are in the legal discre-

(q) *Hebbert v. Purchas*, L. R. 4 P. C. 301, 312. Compare *Martin v. Mackonochie*, L. R. 3 P. C. 409.

(r) *Burnell v. Jenkins*, 2 Phill. 391, 400.

(s) *D'Aguiar v. D'Aguiar*, 1 Hagg. Eccl. 773, 788; *Wilson v. McMath*, 3 Phill. 92.

tion of the Court, adhering to general rules and former precedents. (*t*)

Principles relating to costs.

As to the principles which govern the question of costs :

1. The Court will, in awarding costs, look to the conduct of the parties in the cause. (*u*)

2. If the party proceeding pleads or protracts the suit beyond a stage at which the Court is of opinion it might have been stopped, although he succeeds in obtaining sentence in his favour, he may still be partly condemned in costs, *nomine expensarum*. (*x*)

3. In a criminal suit, the nature of the defensive plea may have a material bearing on the question of costs, although it may not be a complete answer to the charge. (*y*)

4. Attacks on character, if not sustained (although those making them may have been imposed upon by misrepresentations), will render those making them, as an act of justice, liable for costs. (*z*)

### CRIMINAL SUITS.

Criminal suits.

Here, if the charge be of a serious nature the costs almost invariably follow the event. If the charge be sustained the respondent pays the whole costs ; (*a*) if not sustained, he recovers his costs from the promoter. (*b*)

How the Court's

In less important matters, "generally if an offence be com-

(*t*) *Goodhall & Gray v. Whitmore & Fenn*, 2 Hagg. Eccl. 374-5.

(*u*) *Griffiths v. Reed & Harry*, 1 Hagg. Eccl. 210 ; *Groves & Wright v. Rector of Hornsey*, 1 Hagg. Cons. 197 ; *Lagden v. Robinson & Green*, 1 Hagg. Cons. 505-6.

(*x*) *Wyllie v. Mott & French*, 1 Hagg. Eccl. 42.

(*y*) See *Bennett v. Bonaker*, 3 Hagg. Eccl. 25.

(*z*) *Constable & Bailey v. Tufnell & Mason*, 4 Hagg. Eccl. 508. See also *Coppin v. Dillon*, 4 Hagg. Eccl. 375 ; *Huble v. Clark*, 1 Hagg. Eccl. 127. Compare *Armstrong v. Huddlestons*, 1 Moo. P. C. C. 486-492 ; *Patch v. Horlock*, 11 Jur. 637.

(*a*) *Burgoyne v. Free*, 2 Hagg. Eccl. 492-4 ; *Clarke v. Heathcote*, 4 Notes of Cases, 321 ; *Bishop of Norwich v. Pearse*, L. R. 2 Adm. & Eccl. 281.

(*b*) *Bennett v. Bonaker*, 3 Hagg. Eccl. 56 ; *Burder v. Hodgson*, 4 Notes of Cases, 492.



mitted, the expense of correcting it is to be borne by the offender, but it does not necessarily follow that full costs will be given; they may be mitigated according to the discretion of the Court; that discretion, however, is not to be arbitrarily exercised, but upon a just and impartial consideration of all the circumstances of the case.” (c)

discretion is exercised.

Where proceedings are rendered necessary by the conduct of a particular party, the costs almost invariably fall upon this party. Thus the costs of a monition for payment of costs by a necessary consequence fall upon those by whose neglect or refusal such a step has been rendered necessary. (d) Again, where proceedings went on *in pœnam* in default of appearance, the decree for appearance intimating that in default thereof “final sentence would be given according to law and justice,” the Court felt justified in condemning the party not appearing in costs. (e)

If the cause be in form criminal, but its object is to establish a civil right, the costs will not necessarily be thrown upon the defendant. Thus, where a suit was instituted against a clergyman for officiating without a licence, solely for the purpose of trying the rights of the proprietor of a chapel, forty shillings only were given, *nomine expensarum*. (f)

Criminal suits to establish civil rights.

When a faculty is granted, notwithstanding opposition to it, the costs generally fall as a matter of justice on those opposing. Circumstances (such as a difference of opinion in the parish as to the necessity for enlarging the church) may, however, induce a relaxation of that rule. (g)

(c) *Palmer v. Tijou*, 2 Add. 203.

(d) *Coates v. Brown*, 1 Add. 351. Compare *Harris & Wiggins v. Milburn*, 2 Hagg. Eccl. 62.

(e) *Foster v. Foster*, 1 Add. 469; *Bridgewater v. Crutchley*, *ibid.* 480.

(f) *Barton v. Wells*, 1 Hagg. Cons. 34.

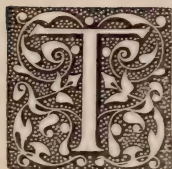
(g) *Groves & Wright v. Rector of Hornsey*, 1 Hagg. Cons. 197; *Tatterton v. Knight*, 1 Phill. 237.

## CHAPTER II.

## THE JURISDICTION OF THE ORDINARY.

SECTION I.—*Who is the Ordinary.*

Definition of  
the term Ordinary.



THIS term, like so many others of Ecclesiastical Law, is nowhere fully defined, so as to enable an enquirer to determine in all cases what person or body is the ordinary, and what are the exact powers and liability of such. Coke, in the First Institute (*h*) says, as to the *ordinarius*, "So he is called in Ecclesiastical Law, *quia habet ordinariam jurisdictionem in jure proprio et non per deputationem*. The name we have anciently taken from the canonists, and do apply it only to a bishop or any other that hath ordinary jurisdiction in causes ecclesiastical. In this case of Littleton (*i*) it is to be observed, that the law doth appoint everything to be done by those, unto whose office it properly appertaineth; and forasmuch as it belongeth to the office of the ordinary in this case to see Divine Service said

(*h*) 96 a.

(*i*) Coke refers to s. 136 of Littleton, where "our author" is treating of frankalmoign, and lays down that lands so held are exempt from distraint. "Et si tiels, que teignent leur tenements en frankalmoigne, rivoilont ou failont de faire tiel divine service (come est dit) le seignior n'apoit eux distraîner pur cel non fesant &c. pur ceo que n'est mis su certains queux services ils doivent faire. Mes le seignior de ceo poit complaine leur ordinary ou irisitour, luy preyant, que il voisoit mitter punishment correction de ceo, et auxy de provider, que tiel negligence ne soit plus avant fait, &c. Et l'ordinary ou visitour de droit ceo doit faire," &c.

and to compel them to do it by ecclesiastical censures, therefore complaint is to be made unto him. Here and in the next section appeareth, that for deciding of controversies and for distribution of justice within this realm, there be two distinct jurisdictions: the one ecclesiastically limited to certain spiritual and particular cases (of the one whereof our author here speaketh); and the court wherein these causes are handled is called *forum ecclesiasticum*. The other jurisdiction is secular and general, for that it is guided by the common and general law of the realm, *quæ pertinet ad coronam et dignitatem regis, et ad regnum in causis placitis rerum temporalium in foro seculari*. So, in this case put by our author, the lord hath remedy for his vine service (albeit they issue out of temporal lands) in *foro ecclesiastico*, by the Ecclesiastical Law, otherwise the lord should be without remedy."

Generally the bishop, acting personally or by his chancellor, is the ordinary. But not necessarily so, and in *Parham v. Templar* (k) the Bishop of Exeter was held to be only co-ordinate with the Dean and Chapter. "The bishop and the dean and chapter in some respects within their respective jurisdictions are held to be co-ordinate. This may be inferred in some degree from the 156th Canon. . . . Here the canon, while it refers to the jurisdiction of the bishop, at the same time cognizes the peculiar jurisdiction of the dean and chapter. This tends to prove that they are to a degree co-ordinate, and not that the bishop has jurisdiction over the dean and chapter. So again, in cases of wills and administrations, where there are *bona notabilia*, peculiars are considered as separate jurisdictions and not as being part of the diocese. For if there be *bona notabilia* in a diocese under the ordinary jurisdiction of the bishop, and also in a peculiar in that diocese, or in two peculiars situated in the same diocese, in such case the probate belongs

The bishop is usually the ordinary.

(k) 3 Phill. 241, 247. See also *Phillpotts v. Boyd*, "Times," August 7th, 1874; *ante*, pp. 254-5.

The peculiar is co-ordinate with the bishop.

to the archbishop. The general result of this is, that a peculiar is not subordinate to, but co-ordinate with, the jurisdiction of a bishop. There is another case in Modern Reports, in which it is still more directly and broadly laid down, that appeals from peculiars go not to the diocesan, but to the archbishop. The case is in the 11th Modern Reports. (1) If sentence be given in a peculiar the appeal therefrom is not to the diocesan, but to the archbishop. This, therefore, directly intimates the general rule of our law to be, that these appeals shall not travel to the bishop, but to the metropolitan."

## SECTION II.—*The Jurisdiction of the Ordinary in matters of Ritual and Ornamentation.*

Jurisdiction given by the rubrics.



HE rubrics in several places refer to the ordinary, and contemplate, if they do not expressly provide, that he shall have, in the cases mentioned, a discretionary power. What are the cases where this discretion exists are by no means clear. But, at least in matters of ceremonial, it must now be held to be established that he has no power to permit the omission or modification of any proceeding enjoined by a rubric, or to allow the introduction of any not so enjoined. (m) This, which necessarily follows from the strict rules and construction laid down by the Privy Council in respect of ceremonies, has also been so expressly decided by that tribunal. In *Martin v. Mackonochie*, (n) Sir Robert Phillimore, in regard to a charge of excessive kneeling, said, that there are some "things neither ordered nor prohibited expressly or by implication, but the doing or use of which must be governed by the living discretion of some person in authority.

*Martin v. Mackonochie* in the Court of Arches in reference to the discretion of the ordinary.

"I wish to say a word first upon this last category. The compilers of our Prayer Book, and the legislature which clothed

(1) 11 Mod. 6.

(m) See *ante*, pp. 165-9.

(n) L. R. 2 Adm. & Eccl. 116, 190-1, 211.



it with the authority of a statute, were well aware that such a living discretion was indispensably necessary for the government of the Church in the performance of her Divine Service, as well as in the due discharge of her other functions. In the preface concerning the Service of the Church, it is stated that nothing can be so plainly set forth but doubts may arise in the use and practice of the same; accordingly the first and every subsequent Prayer Book, including the present one, provided what must have been intended and believed to be a sufficient remedy for the evil which was thus contemplated as of possible, perhaps probable, occurrence. The remedy was as follows:—‘To appease all such diversity (if any arise), and for the resolution of all doubts concerning the manner how to understand, do, and execute the things contained in this book, the parties that so doubt or diversely take anything shall always resort to the bishop of the diocese, who, by his discretion, shall take order for the quieting and appeasing of the same, so that the same order be not contrary to anything contained in this book, and if the bishop of the diocese be in doubt, then he may send for the resolution thereof to the archbishop.’

“Moreover, in my opinion, if Mr. Mackonochie has committed any error in this respect it is one which should not form the subject of a criminal prosecution, but belongs to the category of those cases which should be referred to the bishop, in order that he may exercise thereupon his discretion according to the rubric to which I have already referred.”

Upon the appeal, however, the Privy Council thus commented: (o)—

“The learned judge further observes, that if Mr. Mackonochie has committed any error in this respect, it is one which should not form the subject of a criminal prosecution, but belongs to the category of cases which should be referred to the bishop. This category the learned judge had previously defined to be,

*Martin v. Mackonochie* in the Privy Council.

‘Things neither ordered nor prohibited expressly or by implication, but the doing or use of which must be governed by the living discretion of some person in authority.’

“And as to cases in this category, the learned judge considered that, according to the preface to the Prayer Book, the parties that doubt or diversely take anything, should always resort to the bishop of the diocese.

“Their lordships do not think it necessary to consider minutely the case to which, or the manner in which, this direction in the preface to the Prayer Book is applicable, inasmuch as in their opinion the charge against the respondent, with which they are now dealing, involves what is expressly ordered and prohibited by the rubric, and is therefore a matter in which the bishop could have no jurisdiction to modify or dispense with the rubrical provisions.

“On the whole, their lordships are of opinion that the charge against the respondent, of kneeling during the Prayer of Consecration, has been sustained, and that he should be admonished not only not to recur to the elevation of the paten and the cup, as pleaded in the 3rd article, but also to abstain for the future from kneeling or prostrating himself before the consecrated elements during the Prayer of Consecration, as in the same article also pleaded.”

Duty of the  
Ordinary in  
consecration.

The delicate and difficult question sometimes arises as to the duty of the bishop in respect of the consecration of a church containing illegal ornamentation, and also, supposing he does consecrate it, what is the effect of, and the inference to be drawn from, such consecration? As to these points, Dr. Lushington, in the “St. Barnabas case,” (*p*) made these observations:—

“It has been urged that many of the things now complained of were placed in this or other churches prior to the consecration thereof; and that the bishop, by the act of consecration, stamped them with the approbation of his authority. I cannot ascribe

(*p*) *Westerton v. Liddell*, Moore, Special Report, 21, 22.

much weight to this argument, and I think, for reasons as obvious as they are to my mind conclusive.

“ Unless the bishop, at the time of the consecration, had present to his mind all the matters which are now in dispute, the mere act of consecration would be no evidence of approbation ; for approbation can be founded only on knowledge and intention. Considering the duty the bishop is performing, it cannot reasonably be supposed that, unless his attention was specially called thereto, he would bestow his consideration on things of this description. He is assured by the petition presented to him, *omnia rite esse acta*, and is justified in acting on that presumption. But I will also add, that whenever a bishop is called upon to consecrate a new church, and there are therein at the time ornaments of any description not in accordance with common and ordinary usage, it is the duty of those who apply for consecration to draw the attention of the bishop to such ornaments, that he may advisedly exercise his own discretion with respect to them.

“ How little, indeed, the mere act of consecration practically affects the question, has been recently evinced by the conduct of a right rev. prelate, the Bishop of Gloucester and Bristol, who has not hesitated to consecrate the new church at Bedminster, though it contained an ornament not free from objection, the removal of which he requested in vain. After consecration, says his lordship, if any ornaments be judged superstitious or improper, they will be removable by a decree of the Ecclesiastical Court.”

### SECTION III.—*The Jurisdiction of the Ordinary in other matters.*

**I**N other matters ecclesiastical, the ordinary has a wide jurisdiction. He may examine the presentee to a benefice within his district, and if he find him unfit, he may refuse to

Jurisdiction in other matters.



admit him. The 95th Canon provides that this examination shall take place within twenty-eight days after the presentee has given notice to the bishop. The chief causes of refusal are, unsoundness of doctrine (*q*) and want of learning. As to the latter, in *Albany v. Bishop of St. Asaph*, (*r*) the want of a knowledge of the Welsh language was held a sufficient cause where the service had to be performed in that language. (*s*)

Power of the  
ordinary with  
respect to pre-  
sentees ;

It has usually been considered that the bishop has an absolute power, unexaminable by any other tribunal, of determining whether the presentee were a fit person, and of refusing him if deemed unfit, without alleging the specific causes of unfitness. Thus, in *King v. Archbishop of Canterbury*, (*t*) the general statement of the bishop, that he "conscientiously disapproved," was sufficient. However, in *Bishop of Exeter v. Marshall*, (*u*) it was decided that the right of a patron to present to a benefice is a legal right, though subject in its exercise to the bishop's right to examine into the fitness of the presentee, and to reject him for sufficient ground. In that case the House of Lords also held that an allegation in the plea that the bishop had good reason to believe that the presentee had been guilty of an attempt to commit simony is not sufficient. "But if the bishop refuses to institute, he is bound by law to state his objection in a precise and definite manner, so that the patron may be able to have the validity or truth of the objection tried by law—that is, by the Common Law Courts if it be an objection founded on immorality, and by the metropolitan if the objection be for error in doctrine or insufficiency of learning. The present case depends on the sufficiency of the ground of refusal, as set forth in the plea." (*x*)

(*q*) *King v. Archbishop of Canterbury & Bishop of London*, 15 East. 117. And see the *Gorham Case*, Moore, Special Report.

(*r*) Gibson's Codex, 807 ; Croke, Eliz. 119.

(*s*) See now 1 & 2 Vict. c. 106, ss. 103-5. Compare 26 & 27 Vict. c. 82.

(*t*) *Ubi supra*.

(*u*) L. R. 3 H. L. 17, 52.

(*x*) Per Lord Westbury, L. R. 3 H. L. 52.



The ordinary has the power to license the holding of Public Worship in unconsecrated buildings, and as already seen (y) he may at any moment revoke such licence without assigning a reason therefor, and from such revocation there is no appeal. (z)

to licenses to preach ;

The deans and chapters of cathedrals are visitable by the ordinary, and "all spiritual persons generally are subject to the visitation of the bishop or other ordinary." (a)

over deans and chapters ;

So with regard to chapels of ease, the authority of the incumbent, in most respects supreme and exclusive, is here subject to that of the ordinary. (b)

chapels of ease,

His jurisdiction is however ousted in the case of free chapels, and in a few other instances where the sovereign is the visitor.

and free chapels.

The 19th section of the Act of Uniformity, 1662, (c) provides : "Be it enacted that no person shall be received as a lecturer, or permitted, suffered, or allowed to preach as a lecturer, or to preach or read any sermon or lecture in any church, chapel, or other place of public worship within this realm of England, or the dominion of Wales and town of Berwick-upon-Tweed, unless he be first approved and thereunto licensed by the archbishop of the province or bishop of the diocese."

It was mainly upon this section, though reference was made to the Ecclesiastical Common Law; that the decision turned in the cause already mentioned of *King v. Archbishop of Canterbury*. (d) It was an application for a mandamus to compel the Bishop of London to admit the Rev. Dr. Povah to an endowed lectureship. The Bishop in his affidavit in reply stated that he "conscientiously disapproved." As to the sufficiency of this, and generally as to the power to refuse, Lord Ellenborough said, "But the bishop does not in his affidavit rest upon that or upon any other single ground of objection, but makes this

*King v. Archbishop of Canterbury.*

(y) *Ante*, pp. 17, 30.

(z) *Sedgwick v. Bishop of Manchester*, 38 L. J. Eccl. 30.

(a) Comyn's Digest Visitor. A, 6; and see *Case of Dr. Goodman*, Dyer, 273.

(b) Degge, part i. cap. 12.

(c) 14 Car. II. c. 4.

(d) 15 East, 117; see *ante*, p. 306.

general allegation (which if made in return to the mandamus would be as conclusive as any that could be made), that he thinks the said Richard Povah unfit, and therefore cannot approve or license him. Unless therefore the Court feels itself at liberty, in a case in which the legislature has thought fit for reasons satisfactory to itself in point of wisdom and convenience, to vest the right of approval in the ordinary, to supersede that provision, and not content with seeing that he exercises a mature, deliberate and conscientious judgment upon the subject, to require of him to state to the Court all the grounds and materials upon which that judgment was formed, all the evidence by which it was influenced and directed, and to place ourselves in the situation where the statute has placed the bishop as to the final approbation or disapprobation of the party applying ; unless we thus enlarge the limits and sphere of our jurisdiction, I say we cannot impugn the decision he has solemnly come to, or the disapprobation which he has upon his oath recorded upon the files of the court. It seems to me, therefore, that unless we repeal the act of parliament and violate the functions that are exclusively vested in the bishop and others under the Act, we cannot grant the mandamus that is prayed for, and that in refusing it we contravene no principle of law that has ever been established, nor run counter to any one dictum of any one judge pronounced in any cause in which a question of this nature respecting the exercise of the functions of a bishop has ever occurred before the Court."



# CHAPTER III.

## FACULTIES.

### SECTION I.—*Meaning of the term.*



OWHERE either in the text-books or in an Ecclesiastical judgment, is to be found a succinct definition of the term Faculty. It may perhaps be described as a dispensation, licence, or permission proceeding from a competent authority either before the doing of an act to render legal such act when the doing of it without such sanction would be unlawful, or after the doing of it to confirm and render lawful that which has been done without the needful authority. Very many matters and proceedings there are which are, not absolutely but only conditionally, lawful or unlawful, and which can be sanctioned or disallowed at the discretion of the ordinary.

Definition of Faculty.

### SECTION II.—*Ordinary Faculties.*



Y these are meant faculties for the repair of or in other ways making alterations in or about sacred edifices or their appurtenances, or for the erection, removal, or alteration of the ornamentation thereof. These are the most usual purposes for which such applications are made, but they are not the only purposes.

## GENERAL PRINCIPLES RELATING TO THE GRANT.

Faculties, when granted.

Faculties can be issued only with respect to matters parcel of or appurtenant to consecrated places. "It is clear that the ordinary could not compel the incumbent by Ecclesiastical censures to perform the burial service in the unconsecrated ground in which the only entrance to the vault is to be found."<sup>(e)</sup> The same principles apply to faculties, for the simple reason that the Ecclesiastical Courts have nothing to do with purely temporal concerns.<sup>(f)</sup>

Secular purposes.

Nor can faculties be issued to turn to secular purposes that which has been consecrated. "No judge has power to grant a faculty to convert a part of a churchyard into a highway requiring to be widened for the public benefit, though consent is given by all persons interested."<sup>(g)</sup>

So, no judge has power to grant a faculty to sanction the use of consecrated ground for secular purposes, but as a vestry room is employed for Ecclesiastical as well as secular uses, a faculty after some hesitation was granted for an erection of a vestry room on consecrated ground.<sup>(h)</sup>

This is well shown by the case of *Harper v. Forbes*.<sup>(i)</sup> Here the churchwardens of a parish, with the sanction and approval of the vicar, the rural dean of the district, and the bishop of the diocese, but without any legal authority, permitted a portion of the churchyard to be separated from the remainder, and to be

Faculty for a vault.

<sup>(e)</sup> *Rugg v. Kingsmill*, L. R. 2 P. C. 59, 67, where upon application for a faculty for the appropriation of a family vault to which the sole access was from unconsecrated land, the Privy Council allowed the grant to issue only upon the condition that the grantee appropriated and consented to the consecration of a sufficient piece of ground near the opening of the vault to be so consecrated for the sole and special purpose of burials in the vault.

<sup>(f)</sup> See cases cited in the last note and in the notes following.

<sup>(g)</sup> *Rector, &c. of St. John's, Walbrook v. Parishioners*, 2 Rob. Eccl. Rep. 515, 16 Jur. 645.

<sup>(h)</sup> *Campbell v. Parishioners of Paddington*, 2 Rob. Eccl. Rep. 558, 16 Jur. 646.

<sup>(i)</sup> 5 Jur. (N. S.) 275.



taken into and to form part of a public road. It was held that it is not in the power of any Ecclesiastical Court whatever to allow any portion of consecrated ground to be devoted to secular uses, or to grant a faculty to confirm such an appropriation.

Faculties are to be granted altogether at the discretion of the ordinary, but it must be a sound discretion having a due regard to times and circumstances and to the rights and interests of all parties concerned. If an unsound discretion be exercised a party may appeal to a superior Court, which will revoke the faculty if it has been surreptitiously obtained. (*k*)

Discretion of  
the Ordinary.

In granting or withholding a faculty, *e.g.* for the enlargement of a church, the Court looks to the circumstances of the case so as to see whether such alteration is requisite for the general advantage of the parishioners, and also how far the parishioners may be anxious for it. (*l*)

The Court will consider not only present and existing but prospective circumstances, and it therefore will scruple to decree a faculty, *e.g.* for erecting a vault in the churchyard, without being satisfied that the proposed vault is not likely to be generally prejudicial to the parish, even though the grant of the faculty be unopposed either on the part of the parish or on that of any particular parishioner. (*m*)

And not only will the Court have regard to the circumstances of the parish and other third parties, but in some cases it will also examine into the qualifications of the applicants. For instance, where the application is for the appropriation of pews, the Court before granting such faculty will consider not only whether such grant would be prejudicial to the parish or the persons opposing it, but also whether the party applying for it is

(*k*) *Butt v. Jones*, 2 Hagg. Eccl. 417, 424; *Rugg v. Kingsmill*, L. R. 2 P. C. 59. Compare *Sievekink v. Kingsford & Evans*, 36 L. J. Eccl. 1.

(*l*) *Groves & Wright v. the Rector of Hornsey*, 1 Hagg. Cons. 188.

(*m*) *Rosher v. Vicar, &c. of Northfleet*, 3 Add. 14; *Pitcher v. Vicar, &c. of Northfleet*, 3 Add. 15; *Magnay v. Rector, &c., of St. Michael*, 1 Hagg. Eccl. 48.

from station and property in the parish qualified to receive it. (*n*) Frequently, too, other considerations have to be taken into account. Increase of population, wealth, and the like may render that expedient or the reverse, which previously would have been perfectly unjustifiable. For example, at the present day (the increase of population having rendered church accommodation more requisite), ordinaries should not without care and consideration grant faculties for the appropriation of pews to private individuals. (*o*)

However, in most matters the ordinary must necessarily be the best judge. "Faculties generally are matters so much within the discretion of the local judge that I should scruple to reverse his sentence so far as to revoke them, for I should be unwilling to disturb the judgment of any local ordinary in a matter of that nature, unless it could be clearly shown that it involved the violation of some private right, or would give rise actually or probably to some considerable degree of general inconvenience." (*p*)

It may be added that faculties are irrevocable; once issued they are good even as against the ordinary himself. (*q*) But if obtained fraudulently or surreptitiously it may be revoked on appeal to a superior court. (*r*)

#### PURPOSES FOR WHICH FACULTIES ARE GRANTED.

##### Purposes.

These purposes are co-extensive with the needs of the places for Public Worship, and perhaps it might be said with the requirements of the worshippers. The following are some of the instances for which faculties have been issued, and though the enumeration is by no means complete, it will serve to indicate

(*n*) *Partington v. Rector of Barnes*, 2 Lee, 345.

(*o*) *Butt v. Jones*, 2 Hagg. Eccl. 417; *Woollocombe v. Ouldridge*, 3 Add. 4; *Fuller v. Lane*, 2 Add. 419.

(*p*) Per Sir John Nicholl in *Woollocombe v. Ouldridge*, 3 Add. 5. See also *Butt v. Jones*, 2 Hagg. Eccl. 424; and *Rugg v. Kingsmill*, L. R. 2 P. C. 59.

(*q*) *Fuller v. Lane*, 2 Add. 431. (*r*) *Butt v. Jones*, 2 Hagg. Eccl. 426.

the general nature of such applications and of the circumstances connected therewith :—

(1) The pulling down (*s*) and rebuilding of a church, (*t*) or of any portion thereof. (*u*)

(2) The alteration of the shape, the repair, (*x*) or the enlargement (*y*) of a consecrated building.

(3) To alter the shape or arrangement of or to erect new galleries (*z*) or pews. (*a*)

(4) To appropriate pews. (*b*)

(5) To set up, add to, or alter the ornaments (*c*) or monumental structures. (*d*)

(6) To put up bells (*e*) or organs, (*f*) or in any way to add to or alter the furniture or other articles connected with the church, even though such articles do not strictly come within the term ornamentation.

(*s*) *Steeven v. Rector of St. Martin Orgars*, 2 Add. 255.

(*t*) *Turner v. Inhabitants of Hanwell*, 1 Notes of Cases, 368. See 9 Geo. III. c. 134, and *Warner v. Gater*, 2 Curt. 319.

(*u*) *Parker v. Leach*, L. R. 4 P. C. 312.

(*x*) *Knapp v. Parishioners of Willesden*, 2 Rob. Eccl. 358.

(*y*) *Groves & Wright v. Rector of Hornsey*, 1 Hagg. Cons. 188.

(*z*) *Thomas & Hughes v. Morris*, 1 Add. 470; *Groves & Wright v. Rector of Hornsey*, 1 Hagg. Cons. 188; *Tattersall v. Knight*, 1 Phill. 232.

(*a*) *Knapp v. Parishioners of Willesden*, 2 Rob. Eccl. 358; *Farratt v. Steele*, 3 Phill. 170; *Evan v. Slack*, 38 L. J. Eccl. 38. As to the general nature of faculties relating to pews, see 2 Addams 426-8, per Sir John Nicholl.

(*b*) *Fuller v. Lane*, 2 Add. 419, 432; *Woollocombe v. Ouldridge*, 3 Add. 1; *Partington v. Rector of Barnes*, 2 Lee, 345; *Walter v. Gunner & Drury*, 1 Hagg. Cons. 321; *Rich v. Bushnell*, 4 Hagg. Eccl. 164.

(*c*) *Faulkner v. Litchfield*, 1 Rob. Eccl. 184; *Sieveling v. Kingsford & Evans*, 36 L. J. Eccl. 1. See generally the cases upon ornamentation, *ante*, art i. chap. viii.

(*d*) *Seager v. Bowle*, 1 Add. 541, 554; *Maidman v. Malpas*, 1 Hagg. Cons. 208; *Rich v. Bushnell*, 4 Hagg. Eccl. 164, 175. See *Rugg v. Kingsmill*, L. R. 2 P. C. 59.

(*e*) See *Pearce & Hughes v. Rector of Clapham*, 3 Hagg. Eccl. 10.

(*f*) *Randall & Harden v. Collins & Ludlow*, 2 Lee, 237; *Jay v. Webber*, Hagg. Eccl. 4, 7; and see the cases cited, *ante*, pp. 261-4.

(7) To make, open, or appropriate vaults. (*g*)

(8) To erect or alter gravestones, (*h*) or to place inscriptions thereon. (*i*)

(9) To erect a vestry house or the like upon the consecrated ground. (*k*)

(10) To remove unlawful ornaments. (*l*)

Unlawful ornaments may not be removed without a faculty.

It must be here noticed and reiterated that no person, whatever his position, official or unofficial, may in any way deal with the fabric or furniture of a church, save under the authorization of a faculty. It is no excuse, or rather no justification, that unlawful ornaments have been introduced surreptitiously, and that the persons proceeded against have only acted with *bona fides*, and in the interests of peace and quietness in removing them. If *de facto* attached to the sacred edifice, they may be taken away only under the sanction of the proper ecclesiastical tribunal.

*Dewdney v. Good.*

This is well shown by the two cases next following. In the first of these, *Dewdney v. Good & Ford*, (*m*) one of the church wardens of the parish of Gussage, accompanied by another parishioner, acting upon a resolution of the vestry of the parish, but against the expressed prohibition of the rector, an

(*g*) *Rosher v. Vicar of Northfleet*, 3 Add. 14; *Magnay v. Rector of St Michael*, 1 Hagg. Eccl. 48; *Rugg v. Kingsmill*, L. R. 2 P. C. 59. See *Turner v. Inhabitants of Hanwell*, 1 Notes of Cases, 368.

(*h*) *Sharpe v. Hansard*, 3 Hagg. Eccl. 335. See *Hopper v. Davis*, Lee, 648; *Bardin v. Calcott*, 1 Hagg. Cons. 14.

(*i*) *Brecks v. Woolfrey*, 1 Curt. 657.

(*k*) *Campbell v. Parishioners of Paddington*, 2 Rob. Eccl. 558; 16 Jur. 646. See *Rector of St. John's, Walbrook v. Parishioners*, 2 Rob. Eccl. 515; 16 Jur. 645.

(*l*) *Ritchings v. Cordingley*, L. R. 3 Adm. & Eccl. 113, and cases there cited.

(*m*) 7 Jur. (N. S.) 637; *Maidman v. Malpas*, 1 Hagg. Cons. 205; *Ri v. Bushnell*, 4 Hagg. Eccl. 164; *Bishop of St. David's v. Rutzen*, 7 Jur. (N. S.) 884. See *Bardin v. Calcott*, 1 Hagg. Cons. 14, as to repairing monuments with the churchwardens' consent; *Starkey v. Churchwardens Watlington*, 2 Salk, 547, as to removing things set up in the church, but not actually devoted to it; and *Cardinall v. Molyneux*, 4 D. G. F. & J. 117 Jur. (N. S.) 254, 4 L. T. (N. S.) 605, as to the jurisdiction of the Court of Chancery to restrain the dismantling, &c. of a church.



without any lawful authority from the bishop of the diocese, broke open with a crowbar the principal door of the parish church, and with the assistance of some workmen, proceeded to alter the position of the pulpit, and to pull down and rearrange certain of the seats within the church. It was holden that all who took part in these proceedings had been guilty of a grave ecclesiastical offence. They were ordered to restore that which had been altered, and to pay the costs of the suit, and the churchwarden to deliver up to the rector a new key he had fitted to the door of the church.

In the other case referred to, *Ritchings v. Cordingley*, (n) the facts were as follows:—A ledge or super-altar was placed on the holy table in a parish church, by the order of the incumbent, without the consent of the ordinary. After a lapse of many months, a vestry meeting was held, at which a resolution was passed that the churchwardens should take steps to remove the super-altar. The morning after the vestry meeting, the defendant (one of the churchwardens) sent to the incumbent for the keys of the church. The incumbent refused to give the defendant the keys, but sent word that the defendant could have access to the church that day between eleven o'clock in the forenoon and one o'clock in the afternoon. About one o'clock the defendant went to the church with a workman, and found the church door locked. The workman, acting by the orders of the defendant, picked the lock, entered the church in company with the defendant, and pulled down the super-altar.

*Ritchings v.  
Cordingley.*

The present Dean of Arches held that such conduct was wholly illegal, and after expressing a doubt as to whether he ought not to condemn the defendant in the whole costs of the suit, he admonished him to abstain from such proceedings in future, and ordered him to pay £100, *nomine expensarum*. As to the Ecclesiastical Law bearing upon the matter he observed:—

“The application of this doctrine to the circumstances in the

(n) L. R. 3 Adm. & Eccl. 113.

present case is obvious and material. Observe the necessary and, indeed, the admitted consequences of the defendant's position. Some ornament or piece of furniture is placed in a church, perhaps, as in this case, connected with the administration of the Blessed Sacrament of the Lord's Supper. One churchwarden is offended by it, either as a matter of religious feeling or of mere taste; and without consulting or directly contravening the wish of his brother churchwarden, he proceeds by force to enter the church, by force to remove the ornament. The next day the other churchwarden, to whose religious feelings or taste the ornament is agreeable, proceeds by force to restore the ornament; the next day, it is again removed, the day after again replaced in the same manner. Or perhaps, the two churchwardens meet each other at the head of an army of followers, one with a picklock and a placard, as in this case, 'Protestantism and no Ritualism,' and the other with a crowbar, as in the case of *Dewdney v. Good*, and a banner with 'The Catholic Faith.' Could the worst enemy of the Church of England, Popish or Protestant, desire her to be placed in a more humiliating position? Would there be any end to the irreligious scoffs, gibes, and jests which such scenes would produce? Could the Church of Rome devise better assistance to her hourly increasing aggressions against the Church of England? Could the enemy of the Establishment, who desires to sever the connection of the Church with the State—the subject upon which men's minds are now so agitated—be more gratified than by such a result of discord and scandal?"

### SECTION III.—*Confirmatory Faculties.*

Meaning of the term.



THESE are faculties granted after, not before, the making of alterations and erections, or the doing of acts, and their object is therefore not to authorize what is about to be done, but to confirm that which has already been done informally if not unlawfully. Where the subject in respect of which the

Application is made is of comparatively trivial importance, the grant is made almost as a matter of course. Thus, in *Jay v. Webber*, (o) a faculty to confirm the erection of an organ, which had been effected by voluntary contributions, was granted, the Court observing that such a faculty bound the parish to nothing. By granting it, the ordinary merely approved of and confirmed the erection of the organ by voluntary contributions.

A confirmatory faculty, however, is not claimable of right, and consequently even in trivial affairs the Court usually requires to be satisfied that it will be a permanent improvement of the sacred edifice to grant a confirmation. (p)

The grant is discretionary.

Indeed it must not be overlooked that every unauthorized dealing with a sacred edifice, its ornaments or appurtenances, is an ecclesiastical offence, subjecting the wrongdoer to censure or still heavier punishment. He ought to have made the application before committing the fault. Therefore, when afterwards he comes to the Court, he can only throw himself upon its mercy. In reference to this *Dr. Lushington*, in the suit of *Sieveking v. Kingsford & Evans*, (q) thus animadverted:—

When the case came before me in the first instance, I was of opinion, and I still am, that the defendant has been guilty of a grave offence. It is impossible to look upon the whole that has been done and consider it of but trivial importance. At all times, but especially in these days, nothing should be done to a church without legal sanction. If Mr. Kingsford had obtained the private approval of the archdeacon before he commenced his alterations, I should have been disposed to think more lightly of the matter; but to have proceeded without any sanction or faculty was a grave offence. For a clergyman, without the sanction of any ecclesiastical authority, to make alterations in his church is to act against the Ecclesiastical Laws; and Mr.

(o) 3 Hagg. Eccl. 9.

(p) *Sieveking v. Kingsford & Evans*, 36 L. J. Eccl. 1.

(q) 36 L. J. Eccl. 1, 5.



Kingsford had not the slightest right to do what has been imputed to him."

*Sieveling v.  
Kingsford &  
Evans.*

In this case the defendant had made a great number of alterations in his church. Proceedings being taken against him under the Church Discipline Act, he pleaded guilty. The Court then requested the archdeacon of the district in which the church was situated to inspect it and the alterations complained of, and to report as to their nature and propriety. This he did, and the Court adopted his report as the basis of its decree, granting a confirmatory faculty in respect of the matters approved by the archdeacon, and disallowing the others, and condemning the defendant in costs.

Report of a  
proper person  
often required.

Such a report, however, will not necessarily or invariably be adopted by the Court, which in difficult cases will itself make an inspection. This was done by Lord Stowell in *Bardin v. Calcott*; (r) by Sir H. J. Fust in *Faulkner v. Litchfield*; (s) by Dr. Phillimore in *Hopton v. Minister & Churchwardens of Kemerton*; (t) by Dr. Lushington, and subsequently by the Right Hon. Pemberton Leigh, in *Westerton v. Liddell*. (u)

Jurisdiction of  
the Court of  
Chancery.

As to compelling any person to apply for a confirmatory faculty, it was decided in *Cardinall v. Molyneux* (x) that the Court of Chancery has no jurisdiction to order an incumbent of a church, who has made alterations in the building by removing the pews and substituting chairs, to take the necessary proceedings to obtain a faculty from the bishop of the diocese for the restoration of the church. But in the same suit an injunction was granted to restrain the alteration of the walls or brickwork of a church without the authority of the archdeacon or bishop, on the plaintiff's undertaking to apply to the proper Ecclesiastical Court for authority to restore the church to its original state.

(r) 1 Hagg. Cons. 14-5.

(s) 1 Rob. Eccl. 184.

(t) 5 Notes of Cases, 74.

(u) Moore, Special Report.

(x) 4 D. G. F. & J. 117; 7 Jur. (N. S.) 254.



SECTION IV.—*Anomalous Faculties.*

**I**N addition to the faculties mentioned in the last two sections of this chapter, there are very many other circumstances under which similar authorities are issued. The term, then, generally employed, is “licence” or “dispensation,” but the legal import is precisely the same. Nature of.

The removal of bodies interred in consecrated ground can lawfully be done only under a faculty, and the doing so without a faculty is an ecclesiastical offence. (y) *Adlam v. Colthurst* (z) was a case where this occurred. The defendant, without lawful authority, caused human bones, and portions of the soil, to be removed from a churchyard to a field belonging to the defendant, in a suit promoted by one parishioner against another. The Court of Arches decreed that the defendant had offended against the laws Ecclesiastical, and issued a monition to him to replace in the burial-ground before a certain day the bones and earth so removed. The defendant failed to comply with the order, alleging that he was unable to do so by reason that the field in which the bones and earth had been placed was no longer in his occupation or possession. It was held that his conduct amounted to contempt of court, and that, unless he obeyed the monition within six days, and certified that he had done so, the Court would pronounce him in contempt, and signify the contempt to the Court of Chancery. Removal of bodies.

Under the denomination of faculty will be included marriage licences, licences to hold two benefices (a) or for non-residence, (b) licences to teach in schools (c) or to dispense with the teaching

(y) *Hutchins v. Denziloe & Loveland*, 1 Hagg. Cons. 170, 172.

(z) L. R. 2 Adm. & Eccl. 30.

(a) See 13 & 14 Vict. c. 98, ss. 1, 2, 6, 7, 9, 11; 1 & 2 Vict. c. 106, ss. 130, 132.

(b) See 1 & 2 Vict. c. 106.

(c) See Canon 77.

of Greek and Latin in grammar schools ; (d) licences to hold services in unconsecrated buildings.

25 Hen. VIII.  
c. 21.

The Archbishop of Canterbury may grant Dispensations to the King.  
Vaughan, 18, 19, 20, 27.  
Mod. Cases in Law 364.

By the "Act concerning Peter's-pence and Dispensations," 25 Hen. VIII. c. 21, which provided that no person should henceforth sue for any dispensation or licence to the bishop of Rome, it is enacted (section iii.) that "the Archbishop of Canterbury for the Time being, and his Successors, shall have Power and Authority, from Time to Time, by their Discretions, to give, grant and dispose, by an Instrument under the Seal of the said Archbishop, unto your Majesty, and to your Heirs and Successors, Kings of this Realm, as well all manner such Licences, Dispensations, Compositions, Faculties, Grants, Rescripts, Delegacies, Instruments and all other Writings, for Causes not being contrary or repugnant to the Holy Scripture and Laws of God, as heretofore hath been used and accustomed to be had and obtained by your Highness, or any your most noble Progenitors, or any of your or their Subjects, at the See of Rome, or any Person or Persons by Authority of the same, and all other Licences, Dispensations, Faculties, Compositions, Grants, Rescripts, Delegacies, Instruments, and other Writings in, for and upon all such Causes and Matters as shall be convenient and necessary to be had, for the Honour and Surety of your Highness, your Heirs and Successors, and the Wealth and Profit of this your Realm ; so that the said Archbishop or any his Successors, in no manner wise shall grant any Dispensation Licence, Rescript, or any other Writing afore rehearsed, for a Cause or Matter repugnant to the Law of Almighty God.

The Archbishop of Canterbury may grant Licences of Things wanted to be licensed. Co. pl. f. 512. Hob. 147, 156, and 159.

"Section 4. Be it also enacted by Authority aforesaid, That the said Archbishop and his Successors, after good and due Examination, by them had, of the Causes and Qualities of the Persons procuring for Licences, Dispensations, Compositions, Faculties, Delegacies, Rescripts, Instruments or other Writings, shall have full Power and Authority by themselves, or by their sufficient

(d) 3 & 4 Vict. c. 77 ; see now 32 & 33 Vict. c. 56.

and substantial Commissary or Deputy, by their Discretions, from Time to Time, to grant and dispose, by an Instrument under the Name and Seal of the said Archbishop, as well to any of your Subjects, as to the Subjects of your Heirs and Successors, all manner Licences, Dispensations, Faculties, Compositions, Delegacies, Rescripts, Instruments or other Writings, for any such Cause or Matter, whereof heretofore such Licences, Dispensations, Compositions, Faculties, Delegacies, Rescripts, Instruments or Writings, have been accustomed to be had at the See of Rome, or by the Authority thereof, or of any Prelate of this Realm.

“Section 5. And that the said Archbishop and his Commissary shall not grant any other Licence, Dispensation, Composition, Faculty, Writing or Instrument, in Cases unwont, and not accustomed to be had or obtained at the Court of Rome, nor by Authority thereof, nor by any Prelate of this Realm, until your Grace, your Heirs and Successors, or your or their Council shall first be advertised thereof, and determine whether such Licences, Dispensations, Compositions, Faculties, or other Writings in such Cases unwont and not accustomed to be dispensed withal, or obtained, shall commonly pass as other Dispensations, Faculties, or other Writings, shall or no, upon Pain that the Grantors of every such Licence, Dispensation, or Writing, in such Cases unwont, contrary to this Act, shall make Fine at the Will and Pleasure of your Grace, your Heirs and Successors; and if it be thought and determined by your Grace, your Heirs or Successors, or your or their Council, that Dispensations, Faculties, Licences, or other Writings, in any such Case unwont, shall pass, then the said Archbishop or his Commissary, having Licence of your Highness, your Heirs or Successors for the same, by your or their Bill assigned, shall dispense with them accordingly.”

“Section 7. And that every such Licence, Dispensation, Composition, Faculty, Rescript and Writing, of what Name or

Dispensations to Causes unwonted to be licensed shall not be granted without the approbation of the King or his Council. Moor, 543. Pl. 719, 561. Pl. 763.

All Acts done by Virtue of



any of the  
aforesaid Li-  
cences shall be  
good and of  
Force in Law.

Nature soever It be, for such Causes as the Tax was wont to be iv. li. or above, so granted by the Archbishop, and confirmed under the Great Seal, and all other Licences, Dispensations, Faculties, Rescripts, and Writings hereafter to be granted by the Archbishop, by Virtue and Authority of this Act, whereunto the Great Seal is not limited of Necessity to be put to, by reason that the Tax of them is under iv. li. shall be accepted, approved, allowed, and admitted good and effectual in the Law, in all Places, Courts and Jurisdictions, as well Spiritual as Temporal, within this Realm, and elsewhere within your Dominions, and as beneficial to the Persons obtaining the same, as they should have been if they had been obtained, with all Things requisite, of the See of Rome, or of any other Person by Authority thereof, without any Revocation or Repeal hereafter to be had of any such Licences, Dispensations, Faculties, Rescripts or Writings, of what Nature soever they be.

Licences to  
marry, and  
Children born  
after the same  
Marriages.  
25 H. VIII.  
c. 22, s. 4.  
Hob. 248.

“Section 8. And that all Children procreated after Solemnization of any Marriages to be had or done by Virtue of such Licences or Dispensations, shall be admitted, reputed and taken legitimate in all Courts, as well Spiritual as Temporal, and in all other Places, and inherit the Inheritance of their Parents and Ancestors within this your Realm, and all other your Dominions according to the Laws and Customs of the same; and all Acts to be done, had or executed according to the Tenor of such Licences, Dispensations, Faculties, Writings, or other Instruments, to be made or granted, by Authority of this Act, shall be firm, permanent, and remain in Force; any foreign Laws, Constitutions, Decrees, Canons, Decretals, Inhibitions, Use, Custom, Prescription, or any other Thing had, or hereafter to be made to the contrary notwithstanding.”



CHAPTER IV.

ORDINARY LEGAL PROCEEDINGS.

SECTION I.—*Difference between Civil and Criminal Suits.*



THE ordinary proceedings which may be instituted before the ordinary Ecclesiastical tribunals will be in either a civil or criminal form. It is often of considerable importance to determine which mode of procedure should be adopted; and though this is easy enough in most cases, it is not always so. Most matters are manifestly either civil or criminal, *e.g.* a suit to establish a right to a pew plainly belongs to the former category, while proceedings on account of immoral conduct, or the enunciation of false doctrines, belong to the latter. But sometimes a doubtful case arises.

Often difficult to distinguish civil from criminal matters.

In *Bluck v. Rackham* (*e*) the Privy Council determined that “a proceeding in the Consistorial Court to recover penalties for non-residence under statute 1 & 2 Vict. c. 106, ss. 32, 114, is not a criminal suit within statute 3 & 4 Vict. c. 86, s. 23, but a civil suit, and, therefore, is not to be instituted in the mode pointed out by section 3 of the latter Act.”

*Bluck v. Rackham.*

Dr. Lushington, in delivering the judgment of the Judicial Committee, said, after citing the enactment of statute 1 & 2 Vict. c. 106, s. 114 (down to “no other person whatever”):

(*e*) 5 Moo. P. C. C. 305, 313.

“ Now do these words import a proceeding in the criminal form or in the civil? The words ‘ suing and recovering ’ are wholly inapplicable to the well-known criminal form. Had it been intended to require the criminal form, surely the expressions would have been wholly different; power would have been given to promote the office of the judge, and power to the judge to affix the penalty. Not only does not this section contain any words importing that the criminal form should be adopted, but the whole practice of the Ecclesiastical Courts has been to the contrary. There is no instance, that their lordships have been apprised of, in which penalties have been sued for in the criminal form, or any pecuniary forfeiture decreed. On the other hand, though from the limited jurisdiction of these courts there cannot be many classes of cases, yet we find the proceedings to recover tithes under the statute 2 & 3 of Ed. VI., where double the value in addition is given by way of penalty, to be recovered before the Ecclesiastical judge, have always been in the civil form.”

*Parbam v. Tem-  
plar.*

*Parham v. Templar* (f) may be cited in connection with the present question. It was a suit instituted in a criminal form in the Court of the Dean and Chapter of Exeter for perturbation of a pew. No objection was raised in this court to the form of the suit. From the decree made the promovent appealed to the Court of Arches, and the judge thereof, Sir John Nicholl, decided that, upon the merits, he had failed to establish his claim. Sir John Nicholl, however, doubted whether the proper proceedings had been taken. He said: “ The suit is brought and conducted in rather an extraordinary form, viz., as a criminal suit by articles, not as a civil suit for perturbation of seat. The citation is taken out against the Rev. John Templar, the curate of Ashburton, to answer to articles to be administered to him by virtue of the office of the judge, touching and concerning his soul’s health, and the lawful correction and reformation

of his manners and his excesses, for having altered or caused to be altered a certain seat or pew in the nave or body of the church at Ashburton, belonging to Benjamin Parham, gentleman, &c., whereby he has taken away and reduced the length thereof two feet two inches, or thereabout, without the license or faculty of the ordinary, or any other lawful authority whatever in that behalf, and also to show cause why he should not be compelled and admonished to restore the said seat or pew in all respects to its former condition.

“The articles are for having, without authority, altered the pew, to the great injury and prejudice of Parham, but not in violation of the general law.

“The first article sets forth that Parham and his family had sat in the pew from time immemorial.

“The second, that in December, 1817, he had made the alteration in question.

“The third, that when the churchwardens were informed of the alteration, they expressed their disapprobation at it.

“The prayer is that the pew should be restored to its original state, and costs given against Mr. Templar.

“Looking at these articles, both as to the heading and averments, the objects seem rather to be that of a civil suit to obtain redress and restitution of the seat, and it ought undoubtedly to have been proceeded in by a suit for perturbation of seat; but being brought as a criminal suit, it becomes subject to all the rules of a criminal suit. Here, however, answers have been called for to which the promovent is not entitled in a criminal suit.

“The judge of the court below seems to have considered it in a mixed light, both as a criminal and a civil suit.”

In the *Duke of Portland v. Bingham*, (g) a license to preach in a chapel was not allowed to be impeached by proceedings on

*Duke of Portland  
v. Bingham.*

(g) 1 Hagg. Cons. 157. Compare *Molyneux v. Bagshaw*, 9 Jur. (N. S.) 553.

the part of the impropiator in a civil suit, he not showing an interest that would entitle him to maintain such a suit.

*Liddell v. Rainsford.*

*Liddell v. Rainsford* (*h*) is another case illustrative of the distinction now in statement. Here the Court declined to order a decree or a citation in a criminal suit to issue against a clergyman officiating in a chapel to which no district was assigned, for refusing to pay over to the incumbent and churchwardens of the church of the district in which such chapel was situated, the alms collected at the offertory in such chapel, there being no satisfactory evidence before the Court that the district had become a separate parish. It ordered a citation to issue in a civil suit, calling upon the clergyman to show cause why he should not pay over to the incumbent and churchwardens of the district church the monies he had received at the offertory in his chapel.

*Fagg v. Lee.*

In *Fagg v. Lee* (*i*) the Dean of Arches decided that a monition, calling upon the churchwardens of a parish to remove certain alleged unlawful ornaments in the parish church, or to appear and show cause against such removal, must disclose on its face such an interest in the person at whose instance it issued, as would have entitled him to institute and carry on a civil suit commenced in the ordinary way by citation, and must, therefore, contain an allegation that the party taking proceedings has the status of a parishioner of the parish.

## SECTION II.—Civil Suits.

### I. *Who may be Plaintiff.*

Plaintiff must have an interest.



THE difference between civil and criminal proceedings is marked from the very commencement. "The criminal suit is open to every one, the civil suit to every one showing

(*h*) 37 L. J. Eccl. 83; 38 L. J. Eccl. 15.

(*i*) L. R. 4 Adm. & Eccl. 135; affirmed 30 L. T. (N. S.) 801; *Hopper v. Davis*, 1 Lee, 640; *Reg. v. Bishop of Chichester*, 2 E. & E. 209, 29 L. J. (Q. B.) 23.



an interest.”(k) The disabilities arising from infancy or lunacy are the same in the Ecclesiastical as in the ordinary legal courts, and are dealt with by analogous means. Persons may sue *in formâ pauperis*, but this privilege is very jealously guarded. (l) Infants ;  
lunatics ;  
  
*forma pauperis.*

## II. Commencement.

### CITATION OR DECREE.

The proceedings may be opened in one of four ways, viz. by citation, by decree, by monition, or by act on petition.

A citation is the usual method. This is a writ or order issuing from the Court commanding the parties therein mentioned to appear and submit themselves to the judgment of the Court, or to show cause why they should not do so. (m) It must contain :

Citation :

1. The name of the judge, his commission, and the style of the Court. requisites of,

2. The name of the party cited.

3. The day and place where he must appear.

4. The cause for which the suit is to be commenced.

5. The name and address of the party at whose instance the citation is obtained.

6. The residence and diocese of the defendant, to show that he is not cited out of his diocese.

The above requisites are common to all citations whether in civil or criminal suits ; but in a civil suit the citation must in addition :

7. Show the interest of the party complaining. (n)

The term citation is employed in the Consistory Courts. In Decree.

(k) *Turner v. Meyers*, 1 Hagg. Cons. 415 n. Compare the cases in the last three notes.

(l) *Lovelin v. Edward*, 1 Phill. 179 ; *Lait v. Bailey*, 2 Rob. Eccl. 150.

(m) See Conset, “ Eccl. Practice,” ed. 1708, p. 26 ; Burns’s “ Eccl. Law,” ed. 1842, vol. ii. p. 245 ; and per Dr. Tristram in *Fagg v. Lee*, L. R. 4 Adm. & Eccl. 139.

(n) *Fagg v. Lee*, L. R. 4 Adm. & Eccl. 146 ; affirmed by the Privy Council, 30 L. T. (N. S.) 801.

the Arches Court this same initiative process is styled a decree. Under ordinary circumstances it is prepared and signed by the proctor of the complainant, and sealed with the seal of the Court. Under special circumstances, however, in whatever court the proceedings be taken, a special application is made to the Court stating the facts in an "act of court," and upon this statement the judge or his surrogate decrees the party to be cited.

Act of Court.

Service of citation—1. Personal ;

2. *Viiis et modis*.

The citation or decree ought if possible to be served personally upon the respondents. If this is impracticable then it seems that a service "*viiis et modis*" is sufficient, that is, by all ways and means likely to affect the party with knowledge, *e. g.* by leaving a copy at his last-known place of residence. The nature of the two kinds of service and the difference in effect between them has been thus explained by Sir John Nicholl. "In the original cause a citation *viiis et modis* was served at the Exchequer at Hull, where this person had his last residence before he quitted England; and at the house he had occupied in that town, and on the pillars of the Royal Exchange at London. The party therefore used all due diligence. There is some difference between this service and a personal service : a personal service may conclude both the party and the Court, but a service *viiis et modis* is constructive service, and concludes the party but does not conclude the Court. The Court on good and sufficient grounds may open proceedings to get at the substantial justice of the case. What are the grounds which would warrant me in opening the case? If there be any fraud or contrivance or collusion in taking out the process, of course that would be sufficient, for no person should be allowed to take advantage of his own fraud.

"It is admitted that the party was at Botany Bay; but he must show first, that he was ignorant of the proceedings; secondly, that he has used due diligence since he became acquainted with them; and thirdly, that he has a *primâ facie* case on the merits, and that justice would require the cause to be opened. Ignorance

f the proceedings he has shown, for he was at Botany Bay when they took place ; he has shown that he came to England with due expedition, but not that he has used due diligence since his return. He says he was prevented by illness ; the expression ‘ soon after ’ is vague ; again, an illness for several months is unsatisfactory ; it is not set forth to have been such an illness as prevented him from employing a person to make the necessary inquiries : the fact however is, that no notice was given to the other party till the 15th January, 1821, above a year after his return to this country.” (o)

When the citation is returned, a certificate of the service, personal or otherwise, is indorsed upon it, and this is accompanied by an affidavit verifying the same.

Certificate of service.

In default of actual personal service, the Court if satisfied that all proper means have been attempted to obtain service or to fix the defendant with knowledge, proceeds *in contumaciam* and *ex parte*. It has been decided by both the Court of Chancery (p) and the Queen’s Bench (q) that under such circumstances it is not necessary for the Ecclesiastical Court to “ signify ” to the Court of Chancery that the non-appearing party is in contempt before or in lieu of proceeding *in contumaciam*.

Procedure in contumaciam.

### MONITION.

This must not be confounded either with the ordinary monition, by means of which Ecclesiastical Courts secure the due observance of their decrees and orders, whether interlocutory or final, or with the monition in the nature of a reprimand addressed as a punishment to a wrong doer. (r) The nature of this process has been thus explained by the present learned commissary of the Consistory Court of Canterbury : “ What is a monition here issued otherwise than for the purpose of enforcing obe-

Monition.

(o) *In the goods of T. Robinson*, 3 Phill. 511.

(p) *Re Baines*, Cr. & Ph. 31.

(q) *Reg. v. Baines*, 12 Ad. & Ell. 210.

(r) See *ante*, pp. 275-6.

dience to an order of Court? I think it may be defined to be a summary proceeding by which an Ecclesiastical court may restrain a person from doing or proceeding with an act injurious to private rights, or may restrain the threatened or continued violation of public law, or may compel the performance of any act which it may be the duty of those within his jurisdiction to do.”(s)

This definition can scarcely be considered satisfactory, as it does not enable an enquirer to clearly discriminate a monition of this kind from the other two mentioned above.

Procedure by  
monition ;

As to the difference in the mode of commencing suits, this judge proceeded to say :—“ It is of importance to observe the distinction between the mode of the inception of a civil suit by citation, and of the inception of a proceeding by monition, as well as the difference in the forms of the two processes. A citation, from the time of Oughton in Doctors’ Commons, was prepared by the plaintiff’s proctor, and issued (except in faculty cases) as a matter of right, without the leave of the judge. But where proceedings are commenced by monition, it has never been allowed to issue except with the leave of the judge, obtained upon an *ex parte* application made to him on behalf of the party applying for it, and on his being satisfied that it was a proper case in which to issue a monition.” (t)

exact nature of. In the same case, upon the appeal to the Arches Court, the present Dean of Arches observed, in reference to the same point :—“ It is necessary, in order to remove some confusion which appears to have arisen, to state what the nature of this method of civil proceeding by monition is. In the first place, it is not to be confounded with a monition to execute the process of a court after sentence given. The monition, in the present case, operates as a citation, and something more ; for it includes the order to appear, which is the proper function of a citation

(s) *Fagg v. Lee*, L. R. 4 Adm. & Eccl. 135, 141.

(t) *Ibid.* 140, 141.



and also orders a certain thing to be done by the party cited, which is the proper function of a monition. The party so cited might have taken one of three courses: he might have appeared and demanded a more formal proceeding, by way of libel or by the less formal way of act on petition; but he might also have made his defence by appearing in obedience to the monition, and showing cause against it to the Court. This is the course which he elected to pursue, which it would seem that the party proceeding himself intended, and which the Court contemplated."

### ACT ON PETITION.

This is a summary mode of proceeding, in which the parties state their respective cases briefly, and support their statements by affidavit. (u) It is the usual form for bringing before the Court questions collateral to, or incidental to, the main issue in cause, such as questions of the interest of a party in the effects of a deceased person on the grant of an administration *pendente lite*. Thus, in *Bishop of Winchester v. Wix*, (x) where the bishop, after the institution of proceedings, resigned his see, and the defendant contended that thereupon the suit abated, the facts involved were stated in an act on petition, and submitted to the determination of the Court. But in reference to such collateral points, "it is the invariable practice of the Ecclesiastical Court not to allow matter to be introduced into an act on petition in opposition to an allegation in the principal cause." (y) Sometimes by this mode of proceeding even the sole question at issue may be determined, as where objections are taken to an inventory and account, or to the grant of a faculty, or appointment of a guardian. So, where the next-of-kin disputes the marriage of a deceased intestate with the alleged husband or

Act on petition;

when used.

What matters may be introduced.

(u) *Ville de Varvoise*, 2 Dodson, Adm. 184, per Lord Stowell.

(x) L. R. 3 Adm. & Eccl. 19.

(y) *Dysart v. Dysart*, 2 Notes of Cases, 16, 17, per Dr. Lushington.

wife. By this form, also, proceedings were formerly commenced against the sureties in an administration bond in order to put such bond in suit. (z)

### III. Pleadings.

#### LIBEL.

Pleas.

Every step is a plea, *i. e.* there is no term corresponding to the declaration at Common Law or the bill in Equity, which, though part of the pleadings, are never styled pleas. The first plea contains the statement of plaintiff's claim, and is designated the libel. The chief general rules relating to the admissibility of libels—and they apply equally to the subsequent pleadings—are the following :—

Rules relating to.

1. Clear and concise.

1. Like pleadings in other courts, they should be in clear and concise language, and neither verbose nor prolix.

But the Ecclesiastical Courts are rather lenient. Where objections are unquestionably well founded, they will direct a plea to be reformed; but they are cautious not to exclude any matter essential to the due decision of a case, and, on the other hand, not to allow proceedings to extend to an unnecessary, inconvenient, and expensive length. If a serious doubt arise as to the ultimate effect of any averment in a plea, the Court will be disposed to allow it to stand, and to come before it in proof rather than reject it. (a)

2. Relevant.

2. The matters pleaded must, as in the temporal courts, be material and relevant.

Here, also, the rules are not so stringently applied as in other courts. An allegation responsive (b) was objected to on the

(z) See Burns's "Eccl. Law," ed. 1842, vol. iii. pp. 202-3.

(a) *Croft v. Croft*, 3 Hagg. Eccl. 310; *Richardson v. Richardson*, 1 Hagg. Eccl. 6, 11. See *Dysart v. Dysart*, 3 Curt. 545, per Dr. Lushington; *Saunders v. Saunders*, 11 Jur. 738; *Swift v. Swift*, 4 Hagg. Eccl. 139, 156.

(b) As to this see *post*, p. 338.

round of its contents being immaterial to the issue in the cause ; but a circumstance which it pleaded, although extremely slight, was held sufficient to entitle it to consideration, namely, that the executors of a will had pleaded that the testator was on terms of friendship, but with one of his next-of-kin." An allegation responsive denying this fact was admitted, the Court observing, that if the executors could plead that fact, although it might be a very slight circumstance, still it was but reasonable that those who impugned the will should use the opposite facts ; but since it was only in the event of a deficiency of proof on the part of the executors, that the facts propounded in the responsive allegation could possibly be material, the allegation was not at once admitted to proof, but was suspended until the hearing of the cause, in order that if it should then be thought by the Court to be material to the justice of the case, the conclusion of the cause might be rescinded, and the allegation then allowed to go to proof. (c)

3. Facts merely inferential or too remote may not be pleaded.

3. Not inferential.

When the justice of the case, as in the detection of fraud, requires minute detail of circumstances, they must be gone into ; but a minute examination of distant and remote facts, which may only bear by inference on the points at issue, will not be allowed ; but as to those which bear directly on the issue, or are more nearly connected with it, greater latitude will be permitted. (d)

4. The whole case should, if possible, be pleaded at once.

4. The whole case.

In dealing with pleadings, it is the duty of the Court to compel parties to bring the whole of their substantive case before the Court at once, where it is possible ; where, however, the knowledge of the facts, or the proof by which the facts are to

(c) *Hitchings v. Wood*, 2 Moo. P. C. C. 355, 414 ; *Watney v. Lambert*, 4 Hagg. Eccl. 84 ; *Evans v. Knight & Moore*, 3 Phill. 418. See also *Lock v. Denner*, 1 Add. 356.

(d) *Marsh v. Tyrrell & Harding*, 1 Hagg. Eccl. 133.

be supported, are proved not to have been in the possession of the party pleading, additional articles may be given in. (*e*)

Another rule should be specially noticed, as being peculiar to the Ecclesiastical Courts. It may be thus formulated : —

5. Not necessary to plead the general law.

5. Where an offence comes under the general law, it is not necessary to plead the particular statute or canon creating the offence. Where, however, the offence is created under a particular statute, giving a particular penalty for that offence, and upon which statute the offence is founded, it appears the particular statute should be set forth. (*f*)

Admissibility of pleas.

Before any plea is admitted the opposite party may object to its admission. This proceeding is somewhat in the nature of a demurrer, but it differs therefrom mainly in the fact that the matter in question is objected to before it becomes part of the record, and that it is equally competent for a party after any pleading has been filed against him to show that it does not contain any legal ground of complaint, civil or criminal, for which he is answerable. The objections so raised are heard and decided upon by the judge, who either rejects *in toto* the “articles” or “counts” objected to, or admits them either with (*g*) or without amendments.

Rules of Arches Court.

The present rules of the Arches Court provide that the proctor for the party cited shall declare by notice in writing to be left in the Registry within eight days after his being furnished with a copy of the articles, libel, or plea, whether or not he opposes the admission thereof. And if he opposes the same, or in default of appearance, the registrar shall send the papers to the judge, who will thereupon appoint a day to hear counsel and to decide as to the admissibility thereof. (*h*) If a responsive plea be given in it must be within six days. (*i*)

(*e*) *Moorsom v. Moorsom*, 3 Hagg. Eccl. 87; *Lee v. Matthews*, 3 Hagg. Eccl. 169.

(*f*) *Sanders v. Head*, 3 Curt. 565, 578, and the cases there cited.

(*g*) See, for instance, *Sheppard v. Bennett*, 39 L. J. Eccl. 159; First Appeal, L. R. 4 P. C. 350. (*h*) Rule 7. (*i*) Rule 11.



If objections be raised as to the admissibility of any pleading, the notice referred to in the above rules must state the grounds of objection. (*k*)

### LITIS CONTESTATIO.

This is the next stage in the history of a suit. It has been *Litis contestatio*. described as equivalent to the issue at Common Law, but the analogy is rather far-fetched, for the latter occurs late in, and indeed may be considered the end of the pleadings, whereas the *litis contestatio* is very early. The proceeding is thus explained in Burns's "Ecclesiastical Law:" (*l*)—"The plaintiff What it is. his proctor who brings in the libel prays that a day may be assigned for the defendant or his proctor's answer to it, and on such day assigned the plaintiff or his proctor, in presence of the defendant or his proctor, requests the answer, the giving of which creates the *litis contestatio*, which common lawyers call the issue. Such issue may be either, 1. simple affirmative, in which case there is, of course, an end of the suit; or, 2. simple negative, consisting of a general denial of the libel; or what may be termed, 3. qualified affirmative or negative—in the language of Conset, 'when the defendant doth indeed confess the fact, but yet adds some certain qualities or circumstances of this fact, which are silently passed over by the plaintiff, by reason of which omission of the circumstances of the fact it may be said to be different from the fact propounded in the libel; hence, though the defendant may not simply deny the fact, yet he may do it indirectly, while he shows the fact to be much otherwise than what is related by the plaintiff.' In causes of divorce, the party used generally to answer by confessing the fact of marriage, but otherwise contesting the suit negatively."

(*k*) *Daunts v. Crocker*, L. R. 2 Adm. & Eccl. 41.

(*l*) Vol. iii. p. 189, ed. 1842.

## PLEAS.

Plea.

The term plea is here used in its stricter and narrower sense, and in the same way as employed at Common Law and in Chancery. It is the reply, so to speak, given, if any be given, by the party cited to the statement filed against him. The present rules of the Arches Court relating to the issue and to pleas are the following:—

Rules of the  
Arches Court  
as to pleas.

“ 9. If the proctor for the party cited declare he does not oppose the admission of the said plea, or neglect to declare within the required time, the same shall stand admitted, and the said proctor, on the admission thereof, shall, in all plenary suits, be required thereupon to leave written notice in the Registry whether he gives a negative or affirmative issue thereto. If an affirmative issue be given, the registrar shall send the papers to the judge, who will appoint a day for the hearing.

“ 10. If the proctor for the party cited gives a negative issue, he shall at the same time declare whether he intends to plead or not, and a copy of the notice shall be left with the proctor for the promoter the same day. If he does not give in any plea, or if the proceedings be carried on in default, the proctor for the promoter shall declare whether he intends to prove his case by examining witnesses orally or in writing. And in the event of the witnesses being examined orally the papers shall be sent to the judge to appoint a day or days for taking evidence, hearing arguments, and giving judgment.

“ 11. If a responsive plea be given in the same shall be filed in the Registry within six days from the notice mentioned in the 9th rule, and the same time shall be allowed (as in case of articles, &c.) for the other proctor to declare whether such plea is admitted or opposed, and if opposed, the same shall be sent to the judge in like manner as in case of articles, &c.

“ 14. On the admission of the last plea both proctors shall file a Declaration in the Registry within six days, that no further

pleas are to be given in, and they shall then declare whether they intend to examine witnesses *vivâ voce* or by depositions, and no witnesses shall be examined in the cause until such declaration is filed."

#### IV. Answers.

After the pleas come, in civil suits, the answers. They are analogous to the answer to a Bill in Chancery; are, like it, intended for discovery and to obviate the need of proving such of the matters in complaint as are known to the other side to be true; and, like it, they are given upon oath. Personal answers are not confined to being mere echoes of the plea accompanied with simple affirmances or denials, but the respondents are further at liberty to enter into all such matters as may fairly be deemed not more than sufficient to place the transactions as to which their answers are taken in what they insist to be the true and proper light. Consequently, an objection which had been taken to an answer for redundancy was held upon this principle not to be sustained, and was overruled. (*m*)

Personal  
answering.

The purpose being to save the expense of other evidence, (*n*) they must be precise and complete. Each specific averment should be answered. The usual concluding words, "and further or otherwise the respondent denies the said position or article to be true," allude merely to the formal part of the article and will extend no further. (*o*)

Requisites of.

A person is not compellable to answer if the answer required would either criminate or degrade himself; (*p*) and he is bound to answer only as to his knowledge of facts, and not, as in Chancery, to the "best of his information and belief."

(*m*) *Oliver & Peake*, v. *Heathcote*, 2 Add. 35.

(*n*) *Clutton v. Cherry*, 2 Phill. 385; *Saunders v. Saunders*, 11 Jur. 738.

(*o*) *Winchlow v. Smith*, 1 Lee, 417; and see *Carter v. Carter*, Prerog. Crt. H. T. 1840.

(*p*) *Dysart v. Dysart*, 3 Curt. 543; *Swift v. Swift*, 4 Hagg. Eccl. 154; *Robins v. Wolseley*, 1 Lee, 616, 620; *Schultes v. Hodgson*, 1 Add. 105. See *Bishop of Norwich v. Pearse*, L. R. Adm. & Eccl. 281.

Responsive  
allegation.

It is, or rather was, a frequent error of the inferior courts to confound answers with the responsive allegation. But they are distinct both in their character and effect ; the one is given in on the oath of the party, whereas the latter is supported by the testimony of others. An objection to the one may exist inapplicable to the other. (*q*)

Answers become evidence only when read by the opposite party, and it is therefore at his option to render them so or not. (*r*) But the Court will if it think fit look into answers when not read. (*s*)

Like other pleadings they must not be redundant, (*t*) which has been thus explained by Dr. Lushington:—"The true meaning of the term 'redundant' I take to be this : the respondent is not to insert in his answer any matter foreign to the articles he is called upon to answer, although such matters may be admissible in plea ; but he may in his answer allege matter by way of explanation pertinent to the articles, even if such matter shall be solely in his own knowledge and to such extent incapable of proof, or he may state matter which can be substantiated by witnesses, but in this latter instance if such matter be introduced into the answer and not afterwards put in plea or proved, the Court will give no weight or credence to such part of the answer." (*u*)

Rules of the  
Arches Court.

The present rules of practice of the Court of Arches contain the following as to answers (No. 13):—"If on the admission of any Libel or Plea, the Proctor requires the answers of the other party thereto, he shall within three days from the time of such admission leave notice in the Registry thereof, and notice shall be given by the other Proctor within a week subsequent thereto whether he requires a requisition or Commission for

(*q*) *Morgan v. Hopkins*, 2 Phill. 582.

(*r*) *Oliver v. Heathcote*, 2 Add. 35, 41.

(*s*) *Best v. Best*, 2 Phill. 161 ; *Sullivan v. Sullivan*, 2 Hagg. Cons. 253.

(*t*) Compare *ante*, pp. 232-3.

(*u*) *Dysart v. Dysart*, 3 Curt. 543.

(*x*) No. 13.



taking such answers, and if the party whose answers are required resides within fifty miles of London such answers shall be brought into the Registry within ten days from the date of such last notice or the issuing of such Commission, if beyond that distance then within fifteen days; but if the party to give in the answer be abroad, such farther reasonable time shall be allowed as the distance and circumstances may require. Any party in a suit producing himself for his personal answers before a surrogate may be sworn and afterwards repeated to his said Answers in default of the appearance of the other proctor if he refuse or neglect to attend."

### V. Evidence.

Originally all evidence was taken down in writing, but now since 14 & 15 Vict. c. 99, witnesses are examined *vivâ voce* in the Ecclesiastical as in other courts.

The general principles which govern evidence in other courts should regulate that taken in the Ecclesiastical Courts. "I consider it to be of the highest importance that this Court [*i.e.* the Consistory Court of London], should adhere to the same rules of evidence as prevail elsewhere. Indeed I should entertain some doubts whether Ecclesiastical sentences could be received in the courts of Westminster Hall as conclusive, if it were known that they were founded on evidence altogether inadmissible by the rules of those tribunals; but however this might be it is certainly wiser to adhere to the same principles wherever practicable." (y)

Principles of evidence.

By the general law of the Ecclesiastical Courts, one witness does not make full proof; not that two witnesses are required to each particular transaction, but where one witness is sufficient there must be adminicular circumstances to corroborate his testimony. (z)

One witness not generally sufficient.

(y) *Conway v. Beazeley*, 3 Hagg. Eccl. 651, per Dr. Lushington. See *Saph v. Atkinson*, 1 Add. 162, 213; *Woods v. Woods*, 2 Curt. 516, 524.

(z) *Evans v. Evans*, 1 Rob. Eccl. 173. See *Simmons v. Simmons*, 5

In *Bishop of Norwich v. Berney*, (a) where the defendant was accused of incontinence, solicitation of chastity, &c., the Privy Council held that one witness, if fully credible, was sufficient to establish the charge, but under the circumstances they required some corroboration of the witness in question.

Competency.

In objecting to the competency of a witness the practice of the Ecclesiastical Courts does not differ from that of other courts. (b)

An accused may be examined.

It has now been decided by the present Dean of Arches, (c) and tacitly admitted by the Privy Council by the examination and cross-examination, in their presence, of the defendant in *Martin v. Mackonochie*, (d) contrary to the decision in *Burder v. O'Neill*, (dd) that in a criminal suit against a clergyman under the Church Discipline Act the defendant is by virtue of 14 & 15 Vict. c. 99, ss. 1 & 2, competent and compellable to give evidence.

### SECTION III.—*Criminal Suits.*

#### *The Promoter.*

Promoter.



AS to the promoter or prolocutor in criminal suits, it may be stated generally that any person being a British subject and of full age may be such, and so may minors by their guardians, and lunatics by their committees; and it is not necessary, as it is in civil suits, (e) that the promoter should show any interest.

Office of the judge.

In criminal suits the "office of the judge" is promoted, that is, the proceedings are taken nominally, in the name and under the sanction of some bishop, who, it seems now established, (f) may refuse to allow his sanction to be invoked. But after he

Notes of Cases, 347, 11 Jur. 830; *Theakston v. Marson*, 4 Hagg. Eccl. 314, a testamentary case before the present Wills Act.

(a) 36 L. J. Eccl. 8.

(b) *Sergeant v. Sergeaut*, 1 Curt. 1, 5. Compare *Woods v. Woods*, 2 Curt. 524.

(c) *Bishop of Norwich v. Pearse*, L. R. 2 Adm. & Eccl. 281.

(d) See L. R. 3 P. C. 412-3; compare *Berney v. Bishop of Norwich*, 36 L. J. Eccl. 8. (dd) 9 Jur. (N. S.) 1109. (e) See *ante*, pp. 326-7.

(f) See per the present Dean of Arches in *Martin v. Mackonochie*, L. R. 2 Adm. & Eccl. 123.

has given his assent, he has no control whatever over the proceedings, (g) and even though he dies or resigns his see, the suit does not abate, but it may be continued by merely altering the title of the suit in accordance with the changed circumstances. This was so decided in *Bishop of Winchester v. Wix*. (h) Here a cause had been sent to the Arches Court by letters of request from the Bishop of Winchester in the first instance, and the letters of request were accepted by the judge of the Arches Court. A decree by letters of request was issued, calling upon the defendant to appear, and the defendant appeared. Afterwards the Bishop of Winchester, who was the promoter of the cause, resigned his see. It was held that the cause had not abated, and that it might be continued at the suit of the same promoter in his individual capacity, on the title of the cause being amended. Sir Robert Phillimore observed, in deciding that no abatement had occurred, "It is necessary to consider carefully the course of proceedings in this case. The letters of request had been duly sent to this Court; the Court had accepted those letters, and issued process to bring the accused party before it, and the accused party had appeared, and was properly before the Court prior to the time when the late Bishop of Winchester resigned his see. In the first instance, it rested with the late Bishop of Winchester, in the exercise of his episcopal office, to determine whether the suit should proceed or not, and in what manner: he was invested with a discretionary power to cause his office to be promoted before himself, or to send the case by letters of request to be heard before this Court, either appointing a private person (his secretary, for instance) to carry on the proceedings in his own name, or by appearing himself as a voluntary promoter of the office of the judge. He has exercised his discretion by adopting the latter course. This discretion he had exercised before he resigned his see, and as soon as this Court became properly in

(g) *Maidman v. Malpas*, 1 Hagg. Cons. 205, 208.

(h) L. R. 3 Adm. & Eccl. 19, 21, 22.

possession of the cause the bishop in his official capacity had no longer any control over the proceedings. It is true that the late bishop is the promoter of this cause ; but, as I have said, a private person might, with his sanction, have acted as the promoter. The promoter of the office of this Court must not be confounded with the promoter of the office of the Bishop of Winchester. The cause being now in this Court, it is the office of the Archbishop of Canterbury, acting through this Court, that is being promoted."

Rules of pleading.

The general rules of pleading applied to civil suits are similarly, though with perhaps greater strictness of language, applicable to criminal suits. The chief differences are that in all criminal suits, first, the first plea is styled the articles ; secondly, answers upon oath cannot be required ; (*i*) and, thirdly, if the respondent is a person in holy orders, the proceedings must be conducted in the mode indicated by the Church Discipline Act. (*k*)

'This being so, it will be necessary to notice only some of the chief points relating to the frame or language of the Articles.

#### GENERAL NATURE OF THE ARTICLES.

What the articles must contain.

Though it is necessary in all cases, it is particularly so in cases of correction for an ecclesiastical offence, that the articles should contain a clear and distinct statement of facts intended to be proved, not travelling into extraneous or argumentative matter, and that they should be as succinctly drawn as the nature of the case will allow." (*l*) "In a criminal suit the charges must be laid [in the articles] in such a detailed and specific form, that the person accused shall have an opportunity of contradicting or explaining them." (*m*) The prosecution of the articles is to be construed as setting forth the nature of the principal charges, and should, therefore, be in a detailed and

(*i*) See however *Bishop of Norwich v. Pearse*, L. R. 2 Adm. & Eccl. 281.

(*k*) 3 & 4 Vict. c. 86 ; see next chapter.

(*l*) *Wynn v. Davies & Weaver*, 1 Curt. 69.

(*m*) Per Dr. Lushington in *Bennett v. Bonaker*, 3 Hagg. Eccl. 25.



specific form. (*n*) Consequently, where a charge was entirely general, running over a period of fifteen years, and no individual or specific act as to time and place was pleaded, the articles were rejected. (*o*) So Sir Herbert Jenner laid down that “in [criminal suits] the articles ought to state fairly and candidly the whole transaction. Not only is this due to the Court, but it is just to the defendant also, as he might at once admit the facts to be true, &c.” (*p*)

If the articles contain a substantive charge, they must be admitted, even though it is suggested that they do not correctly narrate the circumstances. (*pp*)

Where the office of the judge is promoted, the whole transaction complained of should be fairly and candidly stated at once, in order, first, that the judge may have an opportunity of considering whether the parties may not be (as in a suit for brawling) *in pari delicto*; and, secondly, that the defendant may be enabled, without injustice to himself, to give an affirmative issue. (*q*) Where the charge was against a clergyman, for a general habit of drunkenness and immorality, an appeal from the Arches Court, which had overruled an objection taken to an article by reason of its generality, was dismissed on appeal to the Privy Council. (*r*)

The whole charge should be stated at once.

It should also be observed that the citation governs the articles, and therefore, where they contained a charge not mentioned in the citation, they were held to be inadmissible, since the articles ought to agree with the citation. (*s*)

Citation governs the articles.

(*n*) *Bennett v. Bonaker*, 3 Hagg. Eccl. 25.

(*o*) *Oliver & Toll v. Hobart*, 1 Hagg. Eccl. 43. But see *Speer v. Burder*, 3 Moo. P. C. C. 166, as to the admissibility of general charges of drunkenness.

(*p*) *Taylor v. Morley*, 1 Curt. 470, 484.

(*pp*) *Farman v. Bagster*, 3 Hagg. Eccl. 356.

(*q*) *Lee v. Matthews*, 3 Hagg. Eccl. 169. “The articles should contain the charge and the whole charge,” *Schultes v. Hodgson*, 2 Add. 416.

(*r*) *Speer v. Burder*, 3 Moo. P. C. C. 166.

(*s*) *Brecks v. Woolfrey*, 1 Curt. 880, 903.

## PLEADING AND PROOF OF THE CHARGES ALLEGED.

Analogy of  
articles to cri-  
minal prosecu-  
tions.

Upon this subject, the Privy Council, in their judgments in the "Essays and Reviews Cases," (t) enunciated the following important remarks and rules:—"These prosecutions are in the nature of criminal proceedings, and it is necessary that there should be precision and distinctness in the accusation. The Articles of Charge must distinctly state the opinions which the clerk has advisedly maintained, and set forth the passages in which these opinions are stated. And, further, the articles must specify the doctrines of the Church, which such opinions or teaching of the clerk are alleged to contravene, and the particular Articles of Religion, or portions of the Formularies which contain such doctrines. The accuser is, for the purpose of the charge, confined to the passages which are included and set out in the articles as the matter of the accusation; but it is competent to the accused party to explain from the rest of his work the sense or meaning of any passage or word that is challenged by the accuser."

And in *Sheppard v. Bennett*, (tt) after citing this judgment, their lordships said, with reference to the cause then before them: "Then what has to be done is this: there must be set forth in the articles, as is set forth here in the 12th, in the 18th, and the 25th articles, what it is that is charged against the clerk, and what is the Article of Religion or portion of the Formularies of the Church containing doctrine which the clerk is alleged to have impugned. Well, that has been complied with properly in these articles so far, by stating that he has impugned the doctrine contained in the 29th article of our Thirty-nine Articles, and that he has impugned it, because he has stated that the wicked receive the Body and Blood of our Lord

(t) *Williams v. Bishop of Salisbury*, 2 Moo. P. C. C. (N.S.) 375. Compare the judgment in the *Goreham Case*, Moore, Special Report, p. 462; and *Sheppard v. Bennett*, Second Appeal, L. R. 4 P. C. 371, 401-3.

(tt) First Appeal, L. R. 4 P. C. 350, 363.

in the Holy Communion. So far the articles perform their duty ; but then we have to see whether there are specified the passages in which he, the clerk, is alleged to have stated an opinion controverting that article. Feeling that to be required, the Promoters refer, in the 12th article, to the 5th previous article, as setting forth the passages. In the 18th article, they refer to the 6th article ; and in the 25th article, they refer to the 7th previous article. To the 5th, 6th, and 7th articles, therefore, we must look to see what are the passages in the writings of Mr. Bennett, in which the erroneous doctrine is said to be contained."

This judgment then proceeds to examine the passages from Mr. Bennett's works, which had been fixed upon by the promoter, as containing the erroneous doctrines charged in the articles, and the Lord Chancellor, who was delivering the judgment, held that these passages did not bear out the construction attempted to be placed upon them. He said : " Now Mr. Bennett has not given his explicit approbation to those three propositions which are cited by the pleader, and only cited by the pleader as being the propositions which were in question in Archdeacon Denison's case ; but all he has said is this : ' We have the celebrated legal case of Archdeacon Denison. Archdeacon Denison maintained, in various propositions, the Real Objective Presence of our Blessed Lord in the Eucharist. His doctrine was impugned, and he was cited before the Church Courts. The Archbishop of Canterbury, *in propria personâ*, came to Bath to try the question. It broke down.' There again he is only saying exactly what he said before. He says that the Archdeacon maintained the doctrine of the Real Presence, and the pleader puts it thus : ' Besides that there were several other doctrines, and because there were, I have a right to hold Mr. Bennett answerable as having set forth now within these two years passages in which he impugns the 29th article of the Church of England. The 25th article, which refers to the 7th, is in the same words as the 18th, and subject exactly to the same remarks. . . .

“Then the pleader sets out the propositions, and he wishes to fasten his logic upon Mr. Bennett as being Mr. Bennett’s logic, and to treat the propositions of Archdeacon Denison as being propositions adhered to by Mr. Bennett, upon which he is entitled to reply, as impugning, on the part of Mr. Bennett, the 29th article. Now I confess, having gone through those passages, it seems to me (and their lordships concur) that the articles which are to specify the doctrines impugned must specify the opinions which the clerk has advisedly maintained, and they must set forth the passages in which those opinions are maintained. It is not a compliance with those requisites to set forth other passages in works which he has approved of generally, because those works contain passages which that clerk has not by his own publication supported, maintained, or accepted in their totality and generality. No man certainly would be safe if it were to be held that because approbation is expressed by him of a particular writer upon topics such as these, where the shades of opinion of all men are so minute and so very delicate and refined, according to the turn of each person’s mind, he were to be made answerable for opinions as being his which are not his, but are contained in some work of the general character of which he has expressed his approbation.”

Not the same  
strictness re-  
quired in articles  
as in indict-  
ments.

But though such strictness is necessary in the wording and proof of the charges contained in the articles, nevertheless criminal articles in an Ecclesiastical Court are not to be considered as exactly analogous to an indictment at Common Law, either in ordinary cases or where the offence charged is cognizable at Common Law also. “The counsel for Mr. Mackonochie have contended that inasmuch as a breach of the Statutes of Uniformity rendered Mr. Mackonochie liable to be proceeded against criminally in a Court of Common Law as well as in this court, I am bound to apply the same rules and observe the same strictness required by the Common Law Courts in a matter of indictment. I am of a different opinion, having



regard both to principle and to precedent; nor do I admit the proposition, that unless Mr. Mackonochie be proved to have committed a breach of the Statutes of Uniformity, although he should be proved to have offended against the Law Ecclesiastical, that he is entitled to an acquittal from the charges now laid against him. I deem it to be my duty to consider whether the defendant be or be not proved to have offended against the Laws Ecclesiastical in the matter of one or more or all of these criminal charges, and to give my decision accordingly.” (u)

#### SECTION IV.—*Rules of the Court of Arches.*

S the Court of Arches is the most important—or at least has been so up to the present time—of the Ecclesiastical tribunals, it will be useful to conclude this chapter with the existing Rules and Regulations laid down for observance in proceedings in that court. They are as follows:—

“ 1. All Decrees, Citations, Monitions, Inhibitions, Compulsories, and other Instruments under seal, shall be prepared in and issued from the Registry of this Court, in Forms to be approved of by the Judge, on written application (from the Proctor of the Party or Parties requiring the same, and signed by him), and no Act of Court shall be necessary to lead such Decrees, Citations, Monitions, Inhibitions, Compulsories, or other Instruments, and the same shall bear date on the day on which they are respectively issued.

Decrees, &c.,  
to be prepared  
in Registry.

No act neces-  
sary to lead  
same.

“ 2. All Decrees, Citations, Monitions, Inhibitions, Compulsories, and other Instruments heretofore returnable or brought into Court or in Chambers, shall be returnable or brought into the Registry of the Arches Court, and the said Decrees, Citations, Monitions, Inhibitions, Compulsories, and all other Instruments so returned or brought into the said Registry shall have

Decrees, &c.,  
returnable in  
Registry.

(u) Per the Dean of Arches in *Martin v. Mackonochie*, L. R. 2 Adm. & Eccl. 116, 147.

the same full force and effect in Law as the like Instruments have heretofore had when returned into Court.

Decrees, &c.,  
when made  
returnable.

“ 3. All such Instruments shall be so returnable, if served within fifty miles of London, on the third day after service, and if beyond that distance on the sixth day after service, and if not returned into the Registry within three days of the day on which they are so returnable, they shall be void and of none effect, save and except that this rule shall not apply to Compulsories, and that Monitions for transmission of process shall be returnable in ten days, and not be void if not returned within that period. The Proctor shall file his Proxy in the Registry on the day on which he returns his Decree.

If not returned,  
void.

Book for enter-  
ing returns.

“ 4. The return of all Instruments into the Registry shall be entered by the Registrar on the day on which they are so returned in a book to be kept for that purpose.

Appearance to  
be entered in  
six days.

“ 5. An Appearance shall be entered in the Registry by the Proctor for the party cited, within six days after the return of the Decree of Citation, and he shall file his Proxy at the same time, and if no such Appearance be entered within that time it shall be competent to the party promoting the suit to proceed in default of such Appearance, but an Appearance may be entered at any time during the dependance of the suit, with the consent of the Judge in Chambers.

If no appear-  
ance, may pro-  
ceed in default.

Articles, &c.,  
to be filed  
within six days.

“ 6. On an Appearance being entered a duplicate copy thereof shall be given to the Proctor returning the Decree, who shall file his Articles, Libel, or Petition, in the Registry, within six days from his having such notice, and deliver a copy thereof to the Proctor for the party cited.

To declare  
within eight  
days whether  
opposed.

“ 7. The Proctor for the party cited shall declare by notice in writing, to be left in the Registry within eight days after his being furnished with a copy of the Articles, Libel, or Plea, whether or not he opposes the admission thereof. And if he opposes the same, or in default of Appearance, the Registrar shall send the papers to the Judge, who will thereupon appoint

a day to hear Counsel and to decide as to the admissibility thereof.

“ 8. If the Articles, Libel, or Plea shall be ordered by the Judge to be altered or amended, such alteration or amendment shall be made in the Articles, Libel, or Plea filed in the Registry within ten days from the Judge's order, and a copy thereof left with the other Proctor, who shall within eight days give notice whether he further opposes the admission thereof.

Alteration or amendment in Articles, &c., to be made within ten days.

“ 9. If the Proctor for the party cited declare he does not oppose the admission of the said Plea, or neglect to declare within the required time, the same shall stand admitted, and the said Proctor, on the admission thereof, shall, in all plenary suits, be required thereupon to leave written notice in the Registry whether he gives a negative or affirmative issue thereto. If an affirmative issue be given, the Registrar shall send the papers to the Judge, who will appoint a day for the hearing.

If not opposed, to give issue.

If affirmative, papers to Judge.

“ 10. If the Proctor for the party cited gives a negative issue, he shall at the same time declare whether he intends to plead or not, and a copy of the notice shall be left with the Proctor for the promoter the same day. If he does not give in any Plea, or if the proceedings be carried on in default, the Proctor for the promoter shall declare whether he intends to prove his case by examining witnesses orally, or in writing. And in the event of the witnesses being examined orally, the papers shall be sent to the Judge to appoint a day or days for taking evidence, hearing arguments, and giving judgment.

If negative issue, to declare whether Plea.

If no Plea, to declare whether Witnesses are to be examined orally or in writing.

If orally, papers to be sent to Judge.

“ 11. If a responsive Plea be given in, the same shall be filed in the Registry within six days from the notice mentioned in the 9th rule, and the same time shall be allowed (as in case of Articles, &c.) for the other Proctor to declare whether such Plea is admitted or opposed, and if opposed the same shall be sent to the Judge in like manner as in case of Articles, &c.

If responsive, Plea to be given in within six days.

“ 12. In the event of any clerical or verbal error being



Clerical error  
in Plea may be  
corrected.

discovered in any Plea after it has been filed in the Registry, and previous to any evidence being taken thereon, it shall be competent to the Registrar, on written application from the Proctor, to correct the same, with consent in writing of the other Proctor.

Answers.

“ 13. If, on the admission of any Libel or Plea, the Proctor requires the Answers of the other party thereto, he shall within three days from the time of such admission leave notice in the Registry thereof, and notice shall be given by the other Proctor within a week subsequent thereto whether he requires a Requisition or Commission for taking such Answers, and if the party whose Answers are required resides within fifty miles of London, such Answers shall be brought into the Registry within ten days from the date of such last notice, or the issuing of such Commission; if beyond that distance, then within fifteen days; but if the party to give in the Answers be abroad, such further reasonable time shall be allowed as the distance and circumstances may require. Any Party in a suit producing himself for his personal Answers before a Surrogate may be sworn and afterwards repeated to his said Answers in default of the appearance of the other Proctor, if he refuse or neglect to attend.

Declaration as  
to no further  
Pleas.

“ 14. On the admission of the last Plea both Proctors shall file a Declaration in the Registry, within six days, that no further Pleas are to be given in, and they shall then declare whether they intend to examine Witnesses *vivâ voce* or by depositions, and no Witnesses shall be examined in the cause until such Declaration is filed.

If by an Ex-  
aminer or Com-  
mission, a  
month allowed.

“ 15. In the event of the evidence being taken by an Examiner in town, or under a Commission, the Proctor shall be allowed a month for so examining Witnesses and lodging their depositions in the Registry. Special application may be made to the Judge in Chambers for further time, if necessary, or if the Witnesses reside abroad, and the evidence is to be taken under a Requisition.



“ In all cases where the Witnesses are to be examined under a Requisition or Commission, the notice to be left in the Registry shall be signed by both Proctors.

“ 16. In all cases where Witnesses are examined by an Examiner of the Court, they may be produced and sworn before a Surrogate in default of the appearance of the other Proctor or party, if he refuse or neglect to attend after having received written notice thereof.

Witnesses before Surrogate.

“ 17. All written Depositions shall be taken before an Examiner of the Court, or a Commissioner acting under a Commission; all such examinations and cross Examinations may be conducted either by Counsel or Proctors, or by the Examiner or Commissioner, as the Proctors may determine, and where Counsel are employed the Fees of one Counsel may be allowed on Taxation.

Examinations taken by Examiner.

Counsel may attend.

“ 18. If the Judge, on application, directs the evidence of the Witnesses in any cause to be taken down by a Shorthand Writer, a transcript of the Notes so taken by him shall be admitted as proof of such evidence if he has been previously sworn to report faithfully.

Shorthand Writer's Notes to be evidence.

“ 19. In any Compulsory requiring the attendance of Witnesses, it shall be competent to insert a clause (where applied for) requiring any Witness or Witnesses to produce any paper, book, or document that may be considered material to the interest of the cause.

In Compulsories Witnesses may be required to produce papers.

“ 20. In all cases where Documents or Papers in possession of either party are required to be produced at the hearing of the cause, a notice shall be left in the Registry, signed by the Proctor of the party, requiring their production three days, at least, before the hearing of the cause.

Notice as to Documents to be produced at Hearing.

“ 21. Articles, Libels, Petitions, or Pleas shall be headed in the Form annexed hereto, and shall shortly set forth or plead the several facts necessary to substantiate the Charge or Defence.

Articles to be shortened.

“ 22. In proceedings against Clerks in Holy Orders, it shall

In proceedings against Clerks

not necessary to  
plead Orders,  
Institution, &c.

not be necessary to exhibit and annex their Letters of Orders, Act on Institution, or Licence, as the case may be, and in giving a general issue the Defendant shall be held to admit the same.

Appeal to be  
prosecuted  
within one  
month.

“23. In the event of an Appeal from any Decree or Order made by the Judge, such Appeal must be asserted either at the time of such Decree or Order being made, or by notice left in the Registry within fifteen days from the time of such Decree or Order, and the said Appeal must be duly prosecuted within one month from the date of such Appeal being so asserted.

Otherwise pro-  
ceedings to con-  
tinue.

“24. If no such Appeal be prosecuted within the time limited by the preceding Rule, the proceedings shall be continued, or the Decree of the Court carried into effect, as if there had been no Appeal, unless Notice be previously lodged in the Registry, that the Proctor asserting the Appeal intends to make special application to the Judge for an extension of time, which application may be made in Chambers.

Bill of Costs to  
be lodged within  
fourteen days.

“25. When either of the parties is condemned in costs, the Proctor shall lodge his Bill of Costs in the Registry, and deliver a copy thereof to the other Proctor within fourteen days from the day of the Decree.

Notice as to  
time of Taxa-  
tion.

“26. The Registrar shall give notice to both Proctors of the time appointed for taxing the said Bill, and may proceed to do so (after such notice) in the absence of the Proctor of the party condemned in costs, and on the completion of such Taxation shall enter in the Notice Book his report of the amount to be allowed in respect of such costs.

If Registrar's  
Taxation ob-  
jected to, notice  
within ten  
days.

“27. If either of the Proctors object to such Taxation, notice thereof shall be left in the Registry within ten days from the day of such Taxation, and the same shall thereupon be referred to the Judge, who may hear and determine on such objection in Chambers, but if no such notice be left, the Registrar's Taxation shall be conclusive.

Monition with-  
in fourteen  
days.

“28. If the Proctor whose Bill of Costs has been taxed requires a Monition to enforce the payment thereof, he shall lodge

a written application in the Registry, and leave a copy thereof with the other Proctor within fourteen days from the time of the Registrar's Taxation or Judge's decision thereon, as the case may be.

" 29. If a Proctor wishes to apply to have a party pronounced in contempt for not having obeyed any Decree, Citation, Monition, Inhibition, Compulsory, or other Order of the Court, he shall leave a notice in the Registry containing full particulars of such intended application, and whether any and what notice thereof has been given to such party, and the date thereof.

Special Notice  
for Contempt.

" 30. In case of a party appearing in person in any suit, either as Promoter or Defendant, the foregoing Rules and Regulations shall be applicable to and observed by such party as far as circumstances will permit.

Where party  
appears in per-  
son, Rules to  
apply.

" 31. All Notices, Declarations, &c., required by the foregoing Rules to be given by Proctors, shall be so given in Forms to be approved of by the Judge, and shall bear date on the day on which they are left in the Registry, and shall be signed by the Proctor or his substitute, and copies or duplicates of such Notices, &c., shall be given on the day they are so dated, and left in the Registry to the other Proctor in the cause.

Forms of No-  
tices dated and  
signed.

" 32. It shall be competent to the Judge, on application in Chambers, supported by Affidavits, if necessary, to shorten or extend the times fixed by the foregoing or subsequent Rules.

Judge may  
shorten or ex-  
tend time.

" 33. The Registrar will enter in a book to be kept for that purpose the dates when the several Papers, Notices, &c., are filed, and the other proceedings taken, and report to the Judge in case of any delay or noncompliance with these Orders, who shall thereupon make such Orders for expediting the proceedings as he may see fit.

Notices to be  
entered in a  
book.

" 34. The foregoing Orders will not be enforced from 15th August to 15th October.

Orders not to  
be enforced  
from 15th  
August to 15th  
October.

" 35. The foregoing Rules and Regulations shall be ob-

Rules to apply  
to Petitions.

served, as far as practicable, where the proceedings are by Petition and Affidavits.

Notices and  
Forms to be  
followed.

“ 36. The Notices and Forms annexed to these Rules and Regulations shall be followed as near as the circumstances of each case will permit.”





CHAPTER V.

THE CHURCH DISCIPLINE ACT.

3 & 4 VICTORIA C. 86.

SECTION I.—*General Notice of the Act.*



THE Church Discipline Act, with respect to Ecclesiastical offences committed, or alleged to have been committed, by persons in holy orders, abolishes every species of Ecclesiastical process other than that indicated by itself. Section 23 enacts: "That no criminal suit or proceeding against a clerk in holy orders of the United Church of England and Ireland, for any offence against the Laws Ecclesiastical shall be instituted in any Ecclesiastical Court otherwise than is hereinbefore enacted or provided."

All criminal suits to be according to the Act.

As to the commencement of proceedings, it is enacted "that in every case of any clerk in holy orders of the United Church of England and Ireland who may be charged with any offence against the Laws Ecclesiastical, or concerning whom there may exist scandal or evil report as having offended against the said laws, it shall be lawful for the bishop of the diocese within which the offence is alleged or reported to have been committed, on the application of any party complaining thereof, or if he shall think fit of his own mere motion, to issue a commission under his hand and seal to five persons, of whom one shall be his vicar-general, or an archdeacon, or rural dean within the diocese, for the purpose of making inquiry as to the grounds of such charge or report." (x)

Proceedings must be initiated

In other words, proceedings must be begun by the bishop, by the Bishop.

(x) Section 3.

either at the prompting of some third person, or of his own accord acting upon common report. And such proceedings may be initiated either

How proceedings are initiated.

1. By the issue of a preliminary commission of inquiry, as here set forth; or

2. By sending letters of request in the first instance to the Court of Appeal of the Province. (*y*)

Commissioners to hold preliminary enquiry.

The commissioners shall give seven days' notice to the accused person before their meeting; they are to conduct the inquiry in public unless at the special application of the accused party; they are to examine all the witnesses tendered upon oath or affirmation, and the party accused may also examine them. (*z*)

After the inquiry is over the said commissioners or any three of them shall transmit to the bishop under their hands and seals the depositions of witnesses taken before them, and also a report of the opinion of the majority of the commissioners present at such inquiry, whether or not there be sufficient *prima facie* grounds for instituting proceedings against the party accused; and such report shall be filed in the registry of the diocese; and that if the party accused shall hold any preferment in any other diocese or dioceses, the bishop to whom the report shall be made shall transmit a copy thereof, and of the depositions, to the bishop or bishops of such other diocese or dioceses. (*a*)

Sentence pronounced by consent.

Upon the receipt of the commissioners' report the bishop may by consent of both parties, the complainant and the accused, pronounce sentence, not exceeding the legal penalty if any. (*b*)

Subsequent proceedings.

If this consent be refused, supposing there are proper grounds for complaint, then either the bishop may try the case, either

1. By himself with the assistance of certain assessors (*c*); or
2. Under special circumstances by his commissary appointed

(*y*) Section 13.

(*z*) Section 4.

(*a*) Section 5.

(*b*) Section 6.

(*c*) Sections 9 & 11.

for that purpose (d); or he may then send the cause to the Court of Appeal of the province. (e)

The course of procedure is thus laid down: Section 7. "If Articles. the commissioners shall report that there is sufficient *primâ facie* ground for instituting proceedings, and if the bishop of any diocese within which the party accused may hold any preferment, or the party complaining, shall thereupon think fit to proceed against the party accused, articles shall be drawn up, and, when approved and signed by an advocate practising in Doctors' Commons, shall, together with a copy of the depositions taken by the commissioners, be filed in the registry of the diocese."

Section 8. "That a copy of the articles so filed shall be forthwith served upon the party accused by personally delivering the same to him, or leaving the same at the residence house belonging to any preferment holden by him, or if there be no such house, then at his usual or last known place of residence; and it shall not be lawful to proceed upon any such articles until after the expiration of fourteen days after the day on which such copy shall have been so served." Copy to be served.

The provision as to the alternative of sending the cause to what must be considered the proper tribunal for such matters, viz. the Court of Appeal of the province, is contained in section 13: "That it shall be lawful for the bishop of any diocese within which any such clerk shall hold any preferment, or if he hold no preferment then for the bishop of the diocese within which the offence is alleged to have been committed, in any case, if he shall think fit, either in the first instance, or after the commissioners shall have reported that there is sufficient *primâ facie* ground for instituting proceedings, and before the filing of the articles, but not afterwards, to send the case by letters of request to the Court of Appeal of the province, to be there heard and determined according to the law Sending the complaint to the Court of Arches.

(d) Section 9.

(e) Section 13.

and Practice of such Court." This course has been adopted almost invariably of late years, and usually by sending the letters of request in the first instance, without going to the expense and creating the scandal of a preliminary inquiry, which is often vexatious and frequently needless.

Suits in form criminal to determine civil rights.

The Act specially enacts, that no criminal suit for a criminal offence shall be brought, save in accordance with its provisions. With regard however to certain kinds of suits, in their nature civil but which have been instituted in a criminal form, there is the saving clause, "that nothing hereinbefore contained shall prevent any person from instituting as voluntary promoter, or from prosecuting, in such form and manner and in such Court as he might have done before the passing of this Act, any suit, which, though in form criminal, shall have the effect of asserting, ascertaining, or establishing any civil right, nor to prevent the archbishop of the province from citing any such clerk before him in cases and under circumstances in and under which such archbishop might, before the passing of this Act, cite such clerk under and in pursuance of a statute passed in the twenty-third year of the reign of King Henry the Eighth, intituled 'An Act that no person shall be cited out of the Diocese where he or she dwelleth, except in certain Cases.'" (f)

Limitation of proceedings.

Lastly, with a view to prevent litigation with respect to matters which are passing from memory and which may die out altogether if left alone, it is enacted "that every suit or proceeding against any such clerk in holy orders for any offence against the laws ecclesiastical shall be commenced within two years after the commission of the offence in respect of which the suit or proceeding shall be instituted, and not afterwards, provided always that whenever any such suit or proceeding shall be brought in respect of an offence for which a conviction shall have been obtained in any Court of Common Law, such suit or proceeding may be brought against the person convicted at any

(f) Section 19.



time within six calendar months after such conviction, although more than two years shall have elapsed since the commission of the offence in respect of which such suit or proceeding shall be so brought.” (g)

The offences must be committed within the diocese, and the commissioners must confine their attention to such. (h)

Offences to be within the diocese.

But facts occurring out of the diocese may be alleged by the articles and proceed at the hearing in order to explain facts occurring within the diocese. (i)

## SECTION II.—*The Church Discipline Act.*

N Act for better enforcing Church Discipline (3 & 4 Vict. c. 86), [7th August, 1840.]

“Whereas the manner of proceeding in causes for the correction of clerks requires amendment: Be it enacted by the Queen’s most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that an Act passed in the first year of the reign of King Henry the Seventh, intituled ‘An Act for Bishops to punish Priests and other Religious Men for dishonest Lives,’ shall be repealed.

SECT. 1.

Repeal of 1 H. VII. c. 4.

Section 2. “And be it enacted, That, unless it shall otherwise appear from the context, the term ‘preferment,’ when used in this Act, shall be construed to comprehend every deanery, archdeaconry, prebend, canonry, office of minor canon, priest vicar, or vicar choral in holy orders, and every precentorship, treasurership, sub-deanery, chancellorship of the church, and other dignity and office in any cathedral or collegiate church,

Definition of the terms  
“preferment,”  
“bishop,”  
“archbishop,”  
and “diocese.”

(g) Section 20.

(h) *Homer & Bloomer v. Jones*, 9 Jur. 167.

(i) *Bonwell v. Bishop of London*, 14 Moo. P. C. 395.

Sec. 2.

and every mastership, wardenship, and fellowship in any collegiate church, and all benefices with cure of souls, comprehending therein all parishes, perpetual curacies, donatives, endowed public chapels, parochial chapelries, and chapelries or districts belonging to or reputed to belong, or annexed or reputed to be annexed, to any church or chapel, and every curacy, lectureship, readership, chaplaincy, office, or place which requires the discharge of any spiritual duty, and whether the same be or be not within any exempt or peculiar jurisdiction; and the word 'bishop,' when used in this Act, shall be construed to comprehend 'archbishop;' and the word 'diocese,' when used in this Act, shall be construed to comprehend all places to which the jurisdiction of any bishop extends, under and for the purposes of an Act passed in the second year of the reign of Her present Majesty, intituled 'An Act to abridge the holding of Benefices in Plurality, and to make better Provision for the Residence of the Clergy.'

1 & 2 Vict. c.  
106, ss. 107-9.

The sections of 1 & 2 Vict. c. 106, referred to, are as follows :

107. "All the powers, authorities, provisions, regulations, matters and things in this Act contained, in relation to bishops in their dioceses, shall extend, and be construed to extend, to the archbishops in the respective dioceses of which they are bishops, and also in their own peculiar jurisdictions, as fully and effectually as if the archbishops were named with the bishops in every such case."

108. This section provides specially for peculiars and other places exempt from ordinary episcopal jurisdiction.

109. "In every case in which jurisdiction is given to the bishop of the diocese, or to any archbishop under the provisions of this Act, and for the purposes thereof, and the enforcing the due execution of the provisions thereof, all other and concurrent jurisdiction in respect thereof shall, except as herein otherwise provided, wholly cease; and no other jurisdiction in relation to the provisions of this Act shall be used, exercised, or en-

erced, save and except such jurisdiction of the bishop and arch-  
shop under this Act, anything in any Act or Acts of Parlia-  
ment, or law or laws or usage or custom to the contrary notwith-  
standing.”

Sect. 2.

Section 3. [3 & 4 Vict. c. 86.] “That in every case of any  
clerk in holy orders of the United Church of England and  
Ireland who may be charged with any offence against the Laws  
ecclesiastical, or concerning whom there may exist scandal or  
evil report as having offended against the said laws, it shall be  
lawful for the bishop of the diocese within which the offence is  
alleged or reported to have been committed, on the application  
of any party complaining thereof, or if he shall think fit of his  
own mere motion, to issue a commission under his hand and  
seal to five persons, of whom one shall be his vicar-general, or  
an archdeacon or rural dean within the diocese, for the purpose  
of making inquiry as to the grounds of such charge or report:  
provided always, that notice of the intention to issue such  
commission under the hand of the bishop, containing an intima-  
tion of the nature of the offence, together with the names,  
addition, and residence of the party on whose application or  
motion such commission shall be about to issue, shall be sent  
by the bishop to the party accused fourteen days at least before  
such commission shall issue.

Bishop may  
issue a com-  
mission of in-  
quiry.

Notice to be  
previously  
given.

*Clerk in Holy Orders.* By Canon 76, no person once in  
orders could relinquish them or act as a layman. Now, by the  
Clerical Disabilities Act, 1870,” (k) a means is provided for  
enabling this to be done.

Clerical Dis-  
abilities Act.

If a clerk has resigned his benefice under the “Incumbents  
Resignation Act, 1871,” (l) it is provided by section 13 of that  
statute, that “Every pensioned clerk shall remain amenable to  
ecclesiastical discipline, and be liable to suspension from or for-  
feiture of pension for offences, which would have involved sus-  
pension from or forfeiture of the benefice, had he remained

Incumbents  
Resignation  
Act.

(k) 33 & 34 Vict. c. 91.

(l) 34 & 35 Vict. c. 44.

Sect. 3.

incumbent thereof, and proceedings under the Act 3 & 4 Victoria, chapter 86, intituled 'An Act for better enforcing Church Discipline,' may be taken against every offending pensioned clerk in the same manner as if he had remained incumbent of the benefice, and in the same manner in all respects as if the offence alleged to have been committed had been committed within the said benefice: Provided always, that in case any offending pensioned clerk shall reside elsewhere than in England or Wales or the Channel Islands, it shall be lawful for the bishop, by a letter or summons under his hand, with the consent of the archbishop of the province, to be signified by his countersigning such letter or summons, addressed and sent prepaid by post to such pensioned clerk at his last known place of residence, to require such clerk to attend in England, and appear to any proceedings which may be instituted against him for any such offence by him committed, or alleged to have been committed; and to appoint a place in England where service of all subsequent process, articles, and documents may be made, and service of such process, articles, and documents at such place shall be sufficient; and if such pensioned clerk shall neglect to appear to such proceedings within three calendar months after such letter or summons shall have been sent to him as aforesaid, and to appoint such place for service, such proceedings may be prosecuted in his absence."

What offences  
are cognizable.

*Offence against the Laws Ecclesiastical.* By section 20 of this Act, it is contemplated, and it has also been expressly decided, that the Ecclesiastical Courts may take cognizance of offences, even though they have been or will be the subject of an indictment at Common Law. (m)

Among the offences for which proceedings have been taken under the Act are the following:—

(m) *Post*, p. 375; *Burder v. Hodgson*, 3 Curt. 822; *Clarke v. Heathcote*, 4 Notes of Cases, 321, 1 Rob. 377; *Hussey v. Radcliffe*, 5 Jur. (N.S.) 1014; *Bishop of Norwich v. Pearse*, L. R. 2 Adm. & Eccl. 281.



*Brawling.*—*Burder v. Langley.* (n) Sentence, suspension for eight months, and costs. Sect. 3.

*Drunkenness.*—*Burder v. Speer.* (o) Sentence, three years' suspension, and costs.

*Drunkenness, quarrelling, and general bad conduct.*—*Brookes v. Gresswell.* (p) Sentence, suspension for eighteen months, and costs.—*Bishop of Lincoln v. Day.* (q) Sentence, three years' suspension *ab officio et a beneficio*, and costs.—*Burder v. Pughe.* (r) Sentence, suspension *ab officio et a beneficio* for five years; deprivation prayed.

*Forgery.*—*Hussey v. Radcliffe.* (s) Sentence, deprivation.

*Indecent conduct towards females.*—*Re Monckton.* (t) This was a commission of inquiry held by Dr. Lushington. Some of the charges were held proved, and by consent of the parties, the bishop pronounced a sentence of suspension *ab officio* for twelve months.—*Farnall v. Craig.* (u) In the Court of Arches the sentence was suspension for two years, and £25 costs; but the delegates (x) reversed this decision, on the ground that the articles were not proved.—*Moss v. Edwards.* (y) Articles admitted.—*Clarke v. Heathcote.* (z) Sentence, deposition from the ministry; degradation was prayed, but the Court doubted its power to pronounce it *proprio vigore*.—*Bishop of Norwich v. Bernay.* (a) Articles admitted.

*Indecent conduct towards Males.*—*Burder v. H.*—(b) Articles not sustained.—*Bishop of Norwich v. Pearse.* (c) Charges

(n) 1 Notes of Cases, 542. The statute 23 & 24 Vict. c. 32, has abolished the jurisdiction with respect to brawling of the Ecclesiastical Courts over the laity, but it still remains as to the clergy.

(o) 1 Notes of Cases, 39.

(p) 4 Notes of Cases, 429.

(r) 1 Jur. (N. S.) 1178; see the cases there cited.

(s) 1 Jur. (N. S.) 1014.

(u) 5 Notes of Cases, 557.

(y) 37 L. J. Eccl. 89.

(a) 36 L. J. Eccl. 8.

(c) L. R. 2 Adm. & Eccl. 281.

(q) 4 Notes of Cases, 299.

(t) 3 Notes of Cases, Supplement, lv.

(x) 6 Notes of Cases, 682.

(z) 4 Notes of Cases, 321.

(b) 4 Notes of Cases, 482.

Sect. 3.

held proved, and sentence of deprivation and full costs pronounced.

*Criminal intercourse with Females.*—*Trower v. Hurst.* (d) Sentence, three years' suspension *ab officio et a beneficio*, and costs. — *Kilson v. Loftus.* (e) Sentence, deprivation of all preferment. — *Bonwell v. Bishop of London.* (f) Sentence, deprivation. (ff)

Holding erroneous doctrines.

It is scarcely necessary to cite authorities to show that the holding or promulgation of erroneous doctrines are offences cognizable under this Act.

Shutting up a church.

The shutting up and refusing to perform Divine Service in one of two churches, forming together a distinct parish and benefice, under an Order in Council made pursuant to the 1 & 2 Vict. c. 106, and 2 & 3 Vict. c. 249, is an Ecclesiastical offence, cognizable under the Church Discipline Act, 3 & 4 Vict. c. 86, and the incumbent persisting in such a course, after notice from the ordinary, may be proceeded against under that Act, for having offended against the Ecclesiastical law of the realm by a contumacious refusal to obey the lawful order of his bishop. (g)

Bishop has a discretion as to instituting proceedings.

The bishop has a discretion, and may, if he chooses, refuse to take proceedings, or to permit them to be taken. "Mr. Martin has been allowed by the Bishop of London to promote his lordship's office in this case; and I must, of course, presume that his lordship was satisfied upon good grounds, both that it was proper that his office should be promoted, and that Mr. Martin was a proper promoter, because his lordship, who has the advantage of having a very learned legal adviser, was no doubt aware from the decision of the Queen's Bench, in *Regina v. Bishop of Chichester*, (h) as well as from the decision of the

(d) 4 Notes of Cases, 52.

(e) 4 Notes of Cases, 323.

(f) 14 Moo. P. C. C. 395.

(ff) For a list of other offences and cases, reference may be made to a Parliamentary Return issued in August, 1846. The above does not claim to be a complete list.

(g) *Rugg v. Bishop of Winchester*, L. R. 2 P. C. 223.

(h) 2 E. & E. 209; 29 L. J. (Q. B.) 23.

- Privy Council in *Sherwood v. Ray*, (*hh*) that it was competent to him to exercise his discretion as to whether his office should be promoted or not." (*i*)
- The offence must have been committed within the two years immediately preceding. (*j*)
- As to the effect upon a suit already commenced produced by the resignation of the bishop by whose permission it was commenced, see *Bishop of Winchester v. Wix* (*k*) ; and as to the procedure to be adopted when the proper bishop is infirm, see *Brookes v. Cresswell*. (*l*)
- After the bishop has given notice to an accused clerk, he may abandon such notice, and, instead, send letters of request to the Court of Appeal of his province. (*m*)
- Section 4. [3 & 4 Vict. c. 86.] "That it shall be lawful for the said commissioners or any three of them to examine upon oath, or upon solemn affirmation in cases where an affirmation or declaration is allowed by law instead of an oath, which oath or affirmation or declaration respectively shall be administered by them to all witnesses who shall be tendered to them for examination as well by any party alleging the truth of the charge or report as by the party accused, and to all witnesses whom they may deem it necessary to summon for the purpose of fully prosecuting the inquiry, and ascertaining whether there be sufficient *prima facie* ground for instituting further proceedings; and notice of the time when and place where every such meeting of the commissioners shall be holden shall be given in writing under the hand of one of the said commissioners to the party accused seven days at least before the meeting; and it shall be lawful for the party accused, or his agent, to attend the
- Sect. 3.
- Limitation.
- Effect of resignation
- or infirmity of the Bishop.
- Letters of request.
- Proceedings of the commissioners.

(*hh*) 1 Moo. P. C. C. 353.

(*i*) Per Sir Robert Phillimore, L. R. 2 Adm. & Eccl. 123. Compare *Phinstone v. Purchas*, L. R. 3 P. C. 245.

(*j*) See sect. 20, *post*, pp. 375-6, and the cases there cited.

(*k*) L. R. 3 Adm. & Eccl. 19. (*l*) 4 Notes of Cases, 429.

(*m*) *Sandars v. Head*, 5 Curt. 32, 565; 4 Moo. P. C. C. 186. See sect. 20, *post*, pp. 370-2.

Sect. 4.

proceedings of the commission, and to examine any of the witnesses; and all such preliminary proceedings shall be public unless, on the special application of the party accused, the commissioners shall direct that the same or any part thereof shall be private; and when such preliminary proceedings whether public or private, shall have been closed, one of the said commissioners shall, after due consideration of the depositions taken before them, openly and publicly declare the opinion of the majority of the commissioners present at such inquiry whether there be or be not sufficient *primâ facie* ground for instituting further proceedings."

Proceedings of  
the commis-  
sioners.

The commissioners must confine their attention to facts occurring within the diocese. (n) But the jurisdiction of the Court of Arches with respect to charges under the Church Discipline Act commences with the issue of the decree; the court not being a court of appeal, has no authority to inquire into any errors of the commissioners appointed under the Act. (o)

When a sentence of suspension is pronounced under the Church Discipline Act, the sentence need not show on its face that seven days' notice of the execution of the commission was given, as required by section 4 of the Act, or that the inquiry was in public, or that the other provisions of the statute, as to the preliminary proceedings, with which the bishop pronouncing the sentence has not been personally concerned, have been strictly observed. (p)

Report of the  
commissioners.

Section 5. [3 & 4 Vict. c. 86.] "That the said commissioner or any three of them shall transmit to the bishop under their hands and seals the depositions of witnesses taken before them and also a report of the opinion of the majority of the commissioners present at such inquiry whether or not there be sufficient

(n) *Homer & Bloomer v. Jones*, 9 Jur. 167.

(o) *Flamank v. Simpson*, L. R. 1 Adm. & Eccl. 276, L. R. 1 P. C. 463; *Sheppard v. Bennett*, L. R. 4 P. C. 350, 39 L. J. (Eccl.) 59.

(p) *Morris v. Ogden*, L. R. 4 C. P. 687.



*prima facie* ground for instituting proceedings against the party Sect. 5.  
accused; and such report shall be filed in the registry of the  
diocese; and that if the party accused shall hold any prefer-  
ment in any other (*pp*) diocese or dioceses, the bishop to whom  
the report shall be made shall transmit a copy thereof, and of  
the depositions, to the bishop or bishops of such other diocese  
or dioceses, and shall also, upon the application of the party  
accused, cause to be delivered to such party a copy of the said  
report and of the depositions, on payment of a reasonable  
sum for the same, not exceeding twopence for each folio of  
ninety words."

Section 6. [3 & 4 Vict. c. 86.] "That in all cases where  
proceedings shall have been commenced under this Act against  
any such clerk it shall be lawful for the bishop of any diocese  
within which such clerk may hold any preferment, with the  
consent of such clerk and of the party complaining, if any,  
first obtained in writing, to pronounce, without any further  
proceedings, such sentence as the said bishop shall think fit,  
not exceeding the sentence which might be pronounced in due  
course of law; and all such sentences shall be good and  
effectual in law as if pronounced after a hearing according to  
the provisions of this Act, and may be enforced by the like  
means."

Bishop may  
pronounce sen-  
tence, by con-  
sent, without  
further pro-  
ceedings.

The bishop may impose various conditions in addition to his  
main sentence. This was so decided in *ex parte Rose*. Here  
commission of inquiry was issued under the Church Discipline  
Act against a clerk in holy orders, upon a charge (adultery),  
for which, if substantiated, a sentence of deprivation might have  
been pronounced, and the commissioners having reported to the  
bishop of the diocese that a *prima facie* case was made out for  
instituting further proceedings, the bishop according to the  
provisions in this section of the Act decreed that the clerk  
should be suspended from all discharge of the functions of his

(*pp*) See *Sheppard v. Bennett*, L. R. 2 Adm. & Eccl. 235.

Sect. 6.

clerical offices for three years ; and directed by the decree that at the expiration of the said three years, he should procure certificate, signed by three beneficed clergymen, of his good behaviour and morals during his suspension, and that such certificate should be approved of by the bishop before the suspension should be taken off. The Court of Queen's Bench decided that the bishop had jurisdiction to annex this condition to the sentence of suspension, and a motion for a prohibition was refused. (q)

Articles and  
depositions to  
be filed.

Section 7. [3 & 4 Vict. c. 86.] " That if the commissioners shall report that there is sufficient *prima facie* ground for instituting proceedings, and if the bishop of any diocese within which the party accused may hold any preferment, or the party complaining, shall thereupon think fit to proceed against the party accused, articles shall be drawn up, and, when approved and signed by an advocate practising in Doctors Commons, shall, together with a copy of the depositions taken by the commissioners, be filed in the registry of the diocese of such last-mentioned bishop ; and any such party, or any person on his behalf, shall be entitled to inspect without fee such copies, and to require and have, on demand, from the registrar (who is hereby required to deliver the same), copies of such depositions, on payment of a reasonable sum for the same, not exceeding twopence for each folio of ninety words."

The articles may be signed by any barrister. (r)

Who may sign  
the Articles.

In a proceeding against a clerk, the bishop sent all the documents connected with the case, whether produced before the commissioners or not, to the Registry. When the case came before the Court of Arches, an application was made to the Court to direct the registrar to allow the clerk access to certain of these documents, which were stated to refer to some charges

(q) *Ex parte Rose*, 18 Q. B. 751 ; 21 L. J. (Q. B.) 339. See *Bishop of London v. Day*, 1 Rob. Eccl. 724 ; *Morris v. Ogden*, L. R. 4 C. P. 687.

(r) *Mouncey v. Robinson*, 37 L. J. (Eccl.) 8.

which had been abandoned. These documents had not been produced before the commissioners. It was decided that, as by sections 5 and 7 of this statute the clerk was entitled to be furnished only with the evidence given before the commissioners, the application must be rejected. (s) Sect. 7.

Section 8. [3 & 4 Vict. c. 86.] “That a copy of the articles so filed shall be forthwith served upon the party accused by personally delivering the same to him, or by leaving the same at the residence house belonging to any preferment holden by him, or if there be no such house, then at his usual (ss) or last known place of residence; and it shall not be lawful to proceed upon any such articles until after the expiration of fourteen days after the day on which such copy shall have been so served. Service of copy of the articles on the party.

Section 9. “And be it enacted, That it shall be lawful for the said last-mentioned bishop, by writing under his hand, to require the party to appear, either in person or by his agent duly appointed, as to the said party may seem fit, before him at any place within the diocese, and at any time after the expiration of the said fourteen days, and to make answer to the said articles within such time as to the bishop shall seem reasonable; and if the party shall appear, and by his answer admit the truth of the articles, the bishop, or his commissary specially appointed for that purpose, shall forthwith proceed to pronounce sentence thereupon according to the Ecclesiastical Law. Bishop may require the party to appear before him

Section 10. “And be it further enacted, That every notice and requisition to be given or made in pursuance of this Act shall be served on the party to whom the same respectively relate in the same manner as is hereby directed with respect to the service of a copy of the articles on the party accused. and may pronounce judgment on admission.

Section 11. “And be it enacted, That if the party accused How notice and requisition to be served. Proceedings on

(s) *Farnall v. Craig*, 5 Notes of Cases, 116.

(ss) Compare 33 & 34 Vict. c. 91, s. 6; and 34 & 35 Vict. c. 44, s. 13.



Sect. 11.

a Hearing before the bishop.

shall refuse or neglect to appear and make answer to the said articles, or shall appear and make any answer to the said articles other than an unqualified admission of the truth thereof, the bishop shall proceed to hear the cause, with the assistance of three assessors, to be nominated by the bishop, one of whom shall be an advocate who shall have practised not less than five years in the court of the archbishop of the province, or a sergeant at law, or a barrister of not less than seven years standing, and another shall be the dean of his cathedral church, or of one of his cathedral churches, or one of his archdeacons, or his chancellor; and upon the hearing of such cause the bishop shall determine the same, and pronounce sentence thereupon according to the Ecclesiastical Law.

Sentence of bishop to be effectual in law.

Section 12. "And be it enacted, That all sentences which shall be pronounced by any bishop or his commissary in pursuance of this Act shall be good and effectual in law, and such sentences may be enforced (*t*) by the like means as a sentence pronounced by an Ecclesiastical Court of competent jurisdiction.

Bishop may send the cause to the Court of Appeal of the province.

Section 13. "Provided always, and be it enacted, That it shall be lawful for the bishop of any diocese within which any such clerk shall hold any preferment, or if he hold no preferment then for the bishop of the diocese within which the offence is alleged to have been committed, in any case, if he shall think fit, either in the first instance or after the commissioners shall have reported that there is sufficient *primâ facie* ground for instituting proceedings, and before the filing of the articles, but not afterwards, to send the case by letters of request to the Court of Appeal of the province, to be there heard and determined according to the law and practice of such court: provided always, that the judge of the said court may and he is hereby authorized and empowered from time to time to make any order or orders of court for the purpose of ex-

Judge of the court may make orders

(*t*) See *ante*, pp. 275-6, as to monition, and pp. 293-7 as to contempt; and *Bishop of Lincoln v. Day*, 1 Rob. Eccl. 724, 7 Notes of Cases.



expediting such suits or otherwise improving the practice of the said court, (u) and from time to time to alter and revoke the same: provided also, that there shall be no appeal from any interlocutory decree or order not having the force or effect of a definitive sentence, and thereby ending the suit in the Court of Appeal of the province, save by the permission of the judge of such court."

Sect. 13.  
for expediting  
such suits.  
  
No appeal  
from interlocu-  
tory decree.

The acceptance of letters of request sent by a bishop to the Arches Court of Canterbury, in proceedings taken under the Church Discipline Act, 3 & 4 Vict. c. 86, is not optional with the Dean of the Arches. The bishop is empowered by the 13th section of that Act to send such cases to the Court of Appeal of the province, to be there heard and determined according to the law and practice of such Court; and neither has the Dean of Arches an option in the matter, nor is it requisite that the letters of request should contain any reason for their being sent. (x)

Dean of Arches  
must accept the  
letters of re-  
quest.

No special form is required for the letters of request, and it seems now sufficient that they indicate the offence in a general manner, provided an actual offence cognizable by an Ecclesiastical tribunal be indicated. (y)

Form of letters  
of request.

An archbishop may send letters of request to his own court. (z) Where the bishop sent the case by letters of request in the first instance, and without issuing a commission of inquiry to the Court of Appeal of the province, it was held that he might make his election as to the mode of proceeding, and that the Court of Appeal could not refuse the letters of request. (a)

Not necessary  
to issue a com-  
mission first.

(u) See these orders, *ante*, p. 347-354, and *Flamank v. Simpson*, L. R. 1 P. C. 463.

(x) *Sheppard v. Phillimore & Bennett*, L. R. 2 P. C. 450.

(y) *Sanders v. Head*, *ubi supra*; *Martin v. Mackonochie*, L. R. 2 P. C. 365; *Sheppard v. Bennett*, L. R. 4 P. C. 350, 39 L. J. Eccl. 59.

(z) *Noble v. Voysey*, L. R. 3 P. C. 357.

(a) *Brookes v. Cresswell*, 10 Jur. 647, Arches.

Sect. 13.

The service of notice of the intention to issue a commission by the bishop, but upon which no commission issues, will not preclude the bishop from sending the case to the Court of Appeal by letters of request in the first instance. (b)

In *Flamank v. Simpson* (c) Dr. Lushington gave leave to appeal from an interlocutory order, for the reason that if he had decided wrongly a reversal would put a stop to the whole proceeding.

Bishop empowered to inhibit party accused from performing services of the church, &c.

Section 14. [3 & 4 Vict. c. 86.] "That in every case in which, from the nature of the offence charged, it shall appear to any bishop within whose diocese the party accused may hold any preferment that great scandal is likely to arise from the party accused continuing to perform the services of the church while such charge is under investigation, or that his ministration will be useless while such charge is pending, it shall be lawful for the bishop to cause a notice to be served on such party at the same time with the service of a copy of the articles aforesaid, or at any time pending any proceedings before the bishop or in any Ecclesiastical Court, inhibiting the said party from performing any services of the church within such diocese from and after the expiration of fourteen days from the service of such notice, and until sentence shall have been given in the said cause: provided, that it shall be lawful for such party, being the incumbent of a benefice, within fourteen days after the service of the said notice, to nominate to the bishop any fit person or persons to perform all such services of the church during the period in which such party shall be so inhibited as aforesaid; and if the bishop shall deem the person or persons so nominated fit for the performance of such services he shall grant his licence to him or them accordingly, or in case a fit person shall not be nominated the bishop shall make such provision for the service of the church as to him shall seem neces-

(b) *Head v. Sanders*, 2 Curt. 32, 565; 4 Moo. P. C. C. 186.

(c) *Ubi supra*. The facts of this case are stated in *post*, p. 376, note h.

sary; and in all such cases it shall be lawful for the bishop to assign such stipend, not exceeding the stipend required by law for the curacy of the church belonging to the said party, nor exceeding a moiety of the net annual income of the benefice, as the said bishop may think fit, and to provide for the payment of such stipend, if necessary, by sequestration of the living: provided also, that it shall be lawful for the said bishop at any time to revoke such inhibition and licence respectively.

Section 15. "And be it enacted, That it shall be lawful for any party who shall think himself aggrieved by the judgment pronounced in the first instance by the bishop, or in the Court of Appeal of the province, to appeal from such judgment; and such appeal shall be to the archbishop, and shall be heard before the judge of the Court of Appeal of the province, when the cause shall have been heard and determined in the first instance by the bishop, and shall be proceeded in in the said Court of Appeal in the same manner and subject only to the same appeal as in this Act is provided with respect to cases sent by letters of request to the said court; and the appeal shall be to the Queen in Council, and shall be heard before the Judicial Committee of the Privy Council when the cause shall have been heard and determined in the first instance in the court of the archbishop."

Under this section an appeal lies to the Court of Arches from judgment of a diocesan court presided over by the Archbishop of Canterbury, under section 24 of the same Act, in consequence of the bishop of the diocese being the patron of the preferment held by the party proceeded against. (d)

Section 16. "And be it enacted, That every archbishop and bishop of the United Church of England and Ireland, who now is or at any time hereafter shall be sworn of Her Majesty's Most Honourable Privy Council, shall be a Member of the

What appeals may be.

Appeals from Diocesan Courts.

Archbishops and bishops, members of the Privy Council, to be members of the Judicial Committee on

(d) *Reg. v. Judge of the Court of Arches*, 7 E. & B. 315; 26 L. J. Q. B.) 178.



Sect 16.  
all appeals under this Act.

Judicial Committee of the Privy Council for the purposes of every such appeal as aforesaid ; and that no such appeal shall be heard before the Judicial Committee of the Privy Council unless at least one of such archbishops or bishops shall be present at the hearing thereof : provided always, that the archbishop or bishop who shall have issued the commission hereinbefore mentioned in any such case, or who shall have heard any such case, or who shall have sent any such case by letters of request to the Court of Appeal of the province, shall not sit as a member of the Judicial Committee on an appeal in that case.

Attendance of witnesses, and production of papers, &c. may be compelled.

Section 17. " And be it enacted, That it shall be lawful in any such inquiry for any three or more of the commissioners, or in any such proceeding for the bishop, or for any assessor of the bishop, or for the judge of the Court of Appeal of the province, to require the attendance of such witnesses, and the production of such deeds, evidences, or writings, as may be necessary ; and such bishop, judge, assessor, and commissioners respectively shall have the same power for these purposes as now belong to the Consistorial Court and to the Court of Arches respectively.

Witnesses to be examined on oath, and to be liable to punishment for perjury.

Section 18. And be it enacted, " That every witness who shall be examined in pursuance of this Act shall give his or her evidence upon oath, or upon solemn affirmation in cases where an affirmation is allowed by law instead of an oath, which oath or affirmation respectively shall be administered by the judge of the court or his surrogate, or by the assessor of the bishop, or by a commissioner ; and that every such witness who shall wilfully swear or affirm falsely shall be deemed guilty of perjury."

Accused is liable to give evidence.

The accused is himself competent and compellable to give evidence. (c)

The Privy Council have decided that one witness is now

[1] *Bishop of Norwich v. Pearse*, L. R. 2 App. & Eccl. 281 ; *Martin v. Mackenzie*, L. R. 3 P. C. 31.



sufficient to establish a charge, but in the case in question they required some corroboration. (f) Sect. 18.

Section 19. "Provided always, and be it enacted, That nothing hereinbefore contained shall prevent any person from instituting as voluntary promoter; or from prosecuting, in such form and manner and in such court as he might have done before the passing of this Act, any suit which, though in form criminal, shall have the effect of asserting, ascertaining, or establishing any civil right, nor to prevent the archbishop of the province from citing any such clerk before him in cases and under circumstances in and under which such archbishop might, before the passing of this Act, cite such clerk under and in pursuance of a statute passed in the twenty-third year of the reign of King Henry the Eighth, intituled An Act that no Person shall be cited out of the Diocese where he or she dwelleth, except in certain Cases.

Provisions of Act not to interfere with persons instituting suits to establish a civil right.

23 Hen. VIII. c. 9.

Section 20. "And be it enacted, That every suit or proceeding against any such clerk in holy orders for any offence against the Laws Ecclesiastical shall be commenced within two years after the commission of the offence in respect of which the suit or proceeding shall be instituted, and not afterwards: provided always, that whenever any such suit or proceeding shall be brought in respect of an offence for which a conviction shall have been obtained in any court of common law, such suit or proceeding may be brought against the person convicted at any time within six calendar months after such conviction, although more than two years shall have elapsed since the commission of the offence in respect of which such suit or proceeding shall be so brought."

Suits to be commenced within two years.

Proviso.

Upon the construction of this section it has been held that the suit or proceeding was not commenced by the issuing of a commission, nor by the report made by the commissioners, nor by the filing of articles in the name of the bishop of the diocese

The period of two years dates from the service of the citation.

(f) *Bishop of Norwich v. Berney*, 36 L. J. Eccl. 8.

Sect. 20.

in which the alleged offence was committed, and service of the same on the accused, but first, that the suit or proceeding only commenced when the accused was served with a citation to appear at a certain time and place before a competent court to answer definite charges, as required by sections 9 and 10, and secondly, that the limitation of two years, within the meaning of section 20, was to be reckoned from the time of the service of the citation. (*g*)

*Flamank v.*  
*Simpson.*

In a commission appointed by a bishop under the Church Discipline Act, to inquire into charges against a clergyman, it was not directly alleged that the offences had been committed within two years then last past, but the charges were laid in the present tense, viz. that Mr. S. has lights on the Communion Table, &c. The commissioner overruled an objection taken to this wording of the charges, and found on evidence that there were sufficient grounds for proceeding. Letters of request were then sent up to the Court of Arches. Thereupon the decree was issued, setting forth the charges in the same words as in the commission. The articles filed specified that the offences had been committed within two years. An objection was raised to the admission of the articles, on the ground of the words "within two years" being omitted in the commission and decree. It was held by both the Dean of Arches and the Privy Council that the statute was satisfied, as the charges being laid in the present tense necessarily implied that the offences continued up to the time of issuing the decree. (*b*)

27 Geo. III. c.  
44 not to apply  
to suits against  
spiritual per-  
sons for certain  
offences.

Section 21. "And be it declared and enacted, That the Act passed in the twenty-seventh year of the reign of his late Majesty King George the Third, intituled An Act to prevent frivolous and vexatious Suits in the Ecclesiastical Courts, does not and shall not extend to the time of the commencement of

(*g*) *Ditcher v. Denison*, 11 Moo. P. C. C. 324; *Brookes v. Cresswell*, 10 Jur. 647; *Bishop of Hereford v. T—*, 2 Rob. Eccl. 595.

(*h*) *Flamank v. Simpson*, L. R. 1 Adm. & Eccl. 276, L. R. 1 P. C. 463.

ults or proceedings against spiritual persons for any of the offences in the said Act named." Sect. 21.

Section 22. "And be it enacted, That every archbishop and bishop within the limit of whose province or diocese respectively any place, district, or preferment, exempt or peculiar, shall be locally situate, shall, except as herein otherwise provided, have, use, and exercise all the powers and authorities necessary for the due execution by them respectively of the provisions and purposes of this Act, and for enforcing the same with regard thereto respectively, as such archbishop and bishop respectively would have used and exercised if the same were not exempt or peculiar, but were subject in all respects to the jurisdiction of such archbishop or bishop; and where any place, district, or preferment, exempt or peculiar, shall be locally situate within the limits of more than one province or diocese, or where the same, or any of them, shall be locally situate between the limits of the two provinces, or between the limits of any two or more dioceses, the archbishop or bishop of the cathedral church to whose province or diocese the cathedral, collegiate, or other church or chapel of the place, district, or preferment respectively shall be nearest in local situation shall have, use, and exercise all the powers and authorities which are necessary for the due execution of the provisions of this Act, and enforcing the same with regard hereto respectively, as such archbishop or bishop could have used if the same were not exempt or peculiar, but were subject in all respects to the jurisdiction of such archbishop or bishop respectively, and the same, for all the purposes of this Act, shall be deemed and taken to be within the limits of the province or diocese of such archbishop or bishop; provided that the peculiars belonging to any archbishoprick or bishoprick, though locally situate in another diocese, shall continue subject to the archbishop or bishop to whom they belong, as well for the purposes of this Act as for all other purposes of ecclesiastical jurisdiction."

Power of archbishops and bishops as to exempt or peculiar places or preferments.



Sect. 23.  
No suit to be  
instituted ex-  
cept as herein  
provided.

Section 23. "And be it enacted, That no criminal suit proceeding against a clerk in holy orders of the United Church of England and Ireland for any offence against the Laws Ecclesiastical shall be instituted in any Ecclesiastical Court otherwise than is hereinbefore enacted or provided."

To what this  
section applies.

As to what matters are within this section, see chapter i of this part, section 1, "The difference between Civil and Criminal Suits," (i) and section 3 of this Act and the note thereto. (k)

This enactment apparently abolishes absolutely all Ecclesiastical jurisdiction in respect of matters within the statute, save in the manner provided.

Holding erroneous  
doctrines.

In *ex parte Denison*, (l) it was decided that upon a charge preferred against a clerk in orders of having affirmed and maintained doctrines repugnant to the Thirty-nine Articles, the bishop of the diocese has no power of proceeding personally and without process in court to hear and adjudicate upon such charge under the 13 Eliz. c. 12, s. 2. The Court reiterated that the proceedings in such a case must be instituted and conducted as required by this Act.

Receiving a  
charge at a  
visitation.

Where an archbishop at his visitation received a charge of simony against a clerk, and pronounced sentence of deprivation against him, and interdicted him from exercising his functions on pain of the greater excommunication, it was held that the proceeding ought to have been conducted in the mode directed by the 3 & 4 Vict. c. 86, because it was a criminal proceeding and in court within the words of section 23, and was not within the reservation of section 25; because the power of deprivation personally and without process in court did not belong to the archbishop before the statute, and the Court prohibited the archbishop from enforcing the sentence. (m)

(i) *Ante*, pp. 323-6.

(k) *Ante*, pp. 361-5.

(l) 4 E. & B. 292; 24 L. J. (Q. B.) 34.

(m) *Reg. v. Archbishop of York*, 2 Q. B. 2; 2 G. & D. 202; 6 Jur. 4



The effect of this decision would seem to be to take away from the ordinary any power which previously he might have possessed of proceeding summarily against a person in holy orders for any ecclesiastical offence. Sect. 23.

Section 24. [3 & 4 Vict. c. 86.] "That when any act, save sending a case by letters of request to the Court of Appeal of the province, is to be done, or any authority is to be exercised by a bishop under this Act, such act shall be done or authority exercised by the archbishop of the province in all cases where the bishop who would otherwise do the act or exercise the authority is the patron of any preferment held by the party accused."

If a bishop is patron of the preferment held by accused party, archbishop to act in his stead.

This section puts the archbishop of the province in the place of the bishop, for the purpose of doing any act, or exercising authority under that statute where the bishop is the patron of the preferment held by the clerk proceeded against. In such cases, the archbishop must proceed in the same manner as the bishop would have proceeded; and therefore he is bound, under section 9, to require the accused party to appear before him at a place within the diocese of the bishop by whom the case has been sent by letters of request. (n)

*Ex parte Denison* (o) is an important decision upon the construction of this section. A charge of erroneous doctrine was formally presented to the Bishop of Bath and Wells against the Archdeacon of Taunton, who was also vicar of East Brent, of which living the bishop was patron, with a request that the bishop would send the charge for decision in the Arches Court by letters of request. The bishop sent a copy of the charge to the archdeacon, and called upon him by letter, in which he expressed his view of the charge, to give such explanation of his

*Ex parte Denison.*

(n) *Reg. v. Archbishop of Canterbury*, 6 E. & B. 546; 25 L. J. (Q. B.) 346. See *Cooper v. Dodd*, 2 Rob. Eccl. 270. See also sect. 15, and *Reg. v. Judge of the Court of Arches*, 7 E. & B. 315; 26 L. J. (Q. B.) 178, *ante*, p. 275.

(o) 4 E. & B. 292, 24 L. J. (Q. B.) 24.

Sect. 24.

doctrine as might satisfy him (the bishop), that with a due vigilance over the purity of his teaching, he could abstain from granting letters of request. The archdeacon, in compliance with this requirement, sent a statement of his doctrine; and, in reply, the bishop wrote another letter, in which, after stating that he rejoiced to find that the archdeacon re-affirmed all the doctrinal statements of the Church of England, and agreed to the positions laid down in his (the bishop's) former letter, but also expressing his regret as to the tenour of certain speculations in the archdeacon's sermons, and the error of requiring assent to them as the dogmatic teaching of the Church, he proceeded to say: "The question, then, before me is this: Are these errors as I esteem them of so grave a character as to render it my duty to allow my office to be used to promote an attempt to eject you from the ministry of the English Church? Now, as to the first of these, though I esteem your opinion erroneous, still it does not appear to me to be one which the Church has censured . . . And I do not consider it my duty to seek in Ecclesiastical Courts for an authoritative decision thereon . . . As to the second error, I see with much pleasure from your statement to me that you admit that it is not for you to say what statements of doctrine may or may not justify exclusion from the ministry; and I trust, therefore, that without my having recourse to any further steps, I may rest on the assurance that you will herein submit to my judgment when I admonish you as I now do." Upon these facts, the Court of Queen's Bench, upon an application for a writ of prohibition, held that there had been no adjudication by the bishop upon the charge preferred against the archdeacon, so as to make the issuing of a commission to inquire into the charge by the Archbishop of Canterbury, under the power given by section 24 of the Church Discipline Act, an excess of jurisdiction; and they consequently refused to prohibit the issue of the commission."

Saving of arch-

Section 25. "And be it enacted, That nothing in this Act

contained shall be construed to affect any authority over the Sect. 25.  
clergy of their respective provinces or dioceses which the arch-  
bishops or bishops of England and Wales may now according to bishop and  
law exercise personally and without process in court ; and that bishop's  
nothing herein contained shall extend to Ireland." powers.

Section 26. "And be it enacted, That this Act may be  
amended or repealed by any Act to be passed in this session of  
Parliament."



## CHAPTER VI.

THE PUBLIC WORSHIP REGULATION  
ACT, 1874.

37 &amp; 38 VICTORIA, C. 85.

SECTION I.—*General Notice of the Act.*Limited scope  
of the Act.

THIS statute has been passed for a special and particular purpose, and it therefore has a strictly definite and limited scope. It does not abolish nor, save indirectly, even interfere with any existing court, jurisdiction, or process. It therefore leaves comparatively untouched the multitudinous ecclesiastical tribunals and officials; (*p*) and in future resort may be had in most, if not in all, cases as now to them in preference to the new tribunal, if persons complaining so prefer.

It relates chiefly  
to procedure.

The primary and direct object of the Public Worship Regulation Act is adjective not substantive law—practice and procedure, and not ecclesiastical rights or offences. It creates a new and what is intended to be a more speedy process of investigating certain offences and malfeasances, but it does not—at least it does not directly—add to or diminish the number of such matters, or alter their nature.

(*p*) But see the provision in sect. 7 as to the official principal of the Arches Court of Canterbury, as to the official principal or auditor of the Chancery Court of York, and as to the Master of the Faculties.



It deals with six classes of subjects ; that is to say (q)—

What matters  
within the Act.

1. Alterations in or additions to the fabric, ornaments, or furniture of a church made without lawful authority.

2. The introduction into a church of decorations forbidden by law.

3. The use within the preceding twelve months by an incumbent or with his permission, in any church or burial-ground, of any unlawful ornament of the minister of the church.

4. The neglect to use any prescribed ornament or vesture.

5. The failure by an incumbent to observe, or cause to be observed, the direction contained in the Book of Common Prayer relating to the services, rites, and ceremonies.

6. The making by an incumbent or with his permission of any unlawful addition to, alteration of, or omission from the services, rites and ceremonies. (r)

The statute in some aspects is of a civil rather than criminal nature. It is not every one who can set its machinery in action, but only certain persons who may fairly be considered to have direct and personal interest in the due conduct of public worship. They must be either (s)—

The statute of  
a civil nature.

1. The archdeacon of the archdeaconry ; or

2. A churchwarden of the parish ; or

3. Any three parishioners of the parish within which archdeaconry or parish any church or burial-ground is situate, or for the use of any part of which any burial ground is legally provided ; or

Who may  
initiate pro-  
ceedings.

4. In case of cathedral or collegiate churches, any three inhabitants of the diocese.

In either of the last two cases, the persons so originating proceedings are to be male persons of full age, who must first sign and transmit to the bishop under their hands the declaration contained in Schedule A attached to the Act ; and they must, moreover, for at least one year next before taking any proceed-

(q) See sect. 8.

(r) Sect. 8.

(s) *Ibid.*

ing under the Act, have had their usual place of abode in the diocese within which the church is situated. (*t*)

What course  
the Bishop is  
to adopt.

Upon the receipt by the bishop of such representation, one three courses shall be taken.

1. Bishop  
may veto  
proceedings,

I. If he shall be of opinion, after considering the whole circumstances of the case, that proceedings should not be taken on the representation, he may decline to allow proceedings to be instituted, but in such case he shall state in writing the reasons for his opinion, and such statement shall be deposited in the registry of the diocese, and a copy thereof shall forthwith be transmitted to the person or some one of the persons who shall have made the representation, and to the person complained of.

2. When the  
parties consent.

II. If, however, he shall think that the matter is sufficiently grave for his interference, and that considering all the circumstances he ought to interfere, then further proceedings are to be taken, which will be before the bishop himself if the parties consent, but if not, then before the judge appointed under the Act.

As a preliminary, the bishop is within twenty-one days after receiving the representation to transmit a copy thereof to the person complained of, and shall require such person, and also the person making the representation, to state in writing within twenty-one days whether they are willing to submit to the directions touching the matter of the said representation without appeal. There is no compulsion whatever upon the parties to acquiesce in such suggestion, but if they both shall state their willingness to submit to the directions of the bishop without appeal, he shall forthwith proceed to hear the matter of the representation in such manner as he shall think fit, and shall pronounce such judgment and issue such monition (if any) as he may think proper. (*u*)

Not only must the submission be expressly stated to be with

(*t*) See, however, the notes to sect. 8, *post*, pp. 393-400, as to whether the proviso applies to any other than cathedral or collegiate churches.

(*u*) Sect. 9.

out appeal, but the Act also contains the further enactment that no appeal shall lie from such judgment or monition. And as to the effect as a precedent of such decision, it is provided that no judgment so pronounced by the bishop shall be considered as finally deciding any question of law, so that it may not be again raised by other parties. (x) However, to assist the bishop in arriving at a correct legal conclusion, it is enacted that the parties may, at any time after the making of a representation to the bishop, join in stating any questions arising in such proceedings in a special case signed by a barrister-at-law for the opinion of the judge, and the parties after signing and transmitting the same to the bishop may require it to be transmitted to the judge for hearing, and the judge shall hear and determine the question or questions arising thereon, and any judgment pronounced by the bishop shall be in conformity with such determination. (y)

III. In order that the bishop may so act as arbiter it is necessary that *both* parties should accept his good offices. If either refuses then the matter must be sent to the judge. The Act thus indicates the procedure: "If the person making the representation and the person complained of shall not, within the time aforesaid, state their willingness to submit to the directions of the bishop, the bishop shall forthwith transmit the representation in the mode prescribed by the rules and orders to the archbishop of the province, and the archbishop shall forthwith require the judge to hear the matter of the representation at any place within the diocese or province, or in London or Westminster." (z)

Twenty-eight days' notice is to be given to the parties previous to the hearing, and if the respondent does not within twenty-one days of such notice put in an answer, he is to be deemed to have denied the truth or relevancy of the representation. (a)

In all proceedings before a judge the evidence is to be given

3. Bishop, by consent, may decide.

Notice of the hearing.

Answer.

Evidence to be *visu voce*.

(x) Section 9.

(y) *Ibid.*

(z) *Ibid.*

(a) *Ibid.*

*vivâ voce* and in open court, and the judge has all the powers of a court of record. (b)

Special case.

As to the facts, if the parties do not specially agree that the evidence shall be taken down by a shorthand writer, and that a special case shall not be stated, the judge shall state the facts proved before him in the form of a special case, similar to a special case stated under the Common Law Procedure Acts, 1852—1854. (c)

How orders may be enforced.

The monitions and other orders, whether of the bishop or a judge, may be enforced if necessary by inhibiting the incumbent for a period not exceeding three years. The inhibition may be renewed if necessary, and if it continue for more than three years, or if a second be issued in regard to the same monition within three years from the relaxation of a previous one, the ecclesiastical preferment held by the incumbent shall thereupon, save under special circumstances, become void. (d)

Inhibition.

During such inhibition the bishop may, unless he is satisfied that due provision is otherwise made for the spiritual charge of the parish, make due provision for the service of the church and the cure of souls, and it shall be lawful for the bishop to raise the sum required from time to time for such provision, by sequestration of the profits of such benefice or other ecclesiastical preferment. (e)

Sequestration.

Faculty not necessary,

A faculty is not necessary in order lawfully to obey any monition issued under the Act, though the judge may, if he think fit, direct that a faculty shall be applied for; but the Act in no way limits or controls the discretion of the ordinary, as to the grant or refusal of a faculty. (f)

but if granted, to be by the ordinary.

When the bishop is patron,

When the bishop is himself the patron of the preferment respecting which any representation is made, or is unable from illness to act, the archbishop of his province is to act for him, and when either archbishop is in a similar position Her Majesty

or ill.

(b) Section 9.

(e) *Ibid.*

(c) *Ibid.*

(f) Section 14.

(d) Section 13.



may by her sign manual appoint an archbishop or bishop to act in his place.

In respect of cathedrals and collegiate churches the visitor is put in lieu of the bishop. There is also the special provision that the expenses incurred by carrying out any order or monition may be raised by sequestration of the profits of the preferments held in such cathedral or collegiate church by the dean and chapter thereof. In complaints relating to such churches the person complained of shall be the dean and chapter when the complaint relates to the fabric, ornaments, furniture, or decoration, and when it relates to other matters it shall be the clerk in holy orders alleged to have offended in the matter complained of. (*g*)

Visitor in case of cathedrals, &c.

Lastly must be noticed the saving clauses ; first, with regard to limitation of time, that no proceedings shall be taken under this Act as regards any alteration in or addition to the fabric of a church, if such alteration or addition has been completed five years before the commencement of such proceedings ; (*h*) and, secondly, with regard to an incumbent, that when a sentence has been pronounced by consent, or any suit or proceeding has been commenced against any incumbent under the Act of the 3rd and 4th year of the reign of Her Majesty, chapter 86, he shall not be liable to proceedings under this Act in respect of the same matter, and no incumbent proceeded against under this Act shall be liable to proceedings under the said Act of the 3rd and 4th year of the reign of Her Majesty in respect of any matter upon which judgment has been pronounced under this Act. (*i*)

Limitation of time.

No further or other proceedings to be taken.

The main points in which the Church Discipline Act and the Public Worship Regulation Act resemble each other, are the following :—

Resemblances

1. In proceedings under either the bishop may, by consent of both parties, act as arbitrator.

(*g*) Section 17.

(*h*) Section 9.

(*i*) Section 18.

2. The bishop may at the commencement decline to allow proceedings to be continued. (*k*)

3. In certain cases under the former Act, viz. where the bishop issued letters of request, and in all proceedings under the present one, there is but a single appeal.

and differences  
between the  
Church Disci-  
pline Act and  
the Public  
Worship Re-  
gulation Act.

The differences between the two statutes are numerous :—

1. The former statute, with respect to matters within its purview, abolished all other existing processes ; the present Act is merely supplementary, and the use of its procedure optional.

2. The former statute applies to all “criminal” matters ; the present one applies only to certain specified matters.

3. Under the former Act proceedings may be taken by any one ; under the present Act only by certain defined persons.

4. Complainants under the former Act are never required to give security for costs ; under the present Act this is always required.

5. Under the former Act the bishop is, in theory at least, the active party ; under this one he is not so.

6. In many cases under the former Act there are, or may be three distinct appeals ; under the present Act there is but one.

## SECTION II.—*The Public Worship Regulation Act, with Notes.*

37 & 38 Vict.  
c. 85.



CHAPTER 85. An Act for the better administration of the Laws respecting the regulation of Public Worship [7th August 1874.]

“Whereas it is expedient that in certain cases further regulations should be made for the administration of the laws relating to the performance of divine service according to the use of the Church of England :

“Be it enacted by the Queen’s most Excellent Majesty, be and with the advice and consent of the Lords Spiritual and

(*k*) So settled as to 3 & 4 Vict. c. 86 ; but as to 37 & 38 Vict. c. 85, s. 1 the point is not quite certain. See *post*, pp. 400-1.

Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

*Sections 1-5.*

Section 1. "This Act may be cited as The Public Worship Regulation Act, 1874." Short title.

Section 2. "This Act shall come into operation on the first day of July one thousand eight hundred and seventy-five, except where expressly herein-after provided." Commence-  
ment of Act.

As to the exceptions referred to, see section 7, as to the appointment of the judge, and section 19, as to the drawing up of rules and orders, and of a scale of fees.

See also the concluding clause of section 18, as to the period of limitation.

Section 3. "This Act shall extend to that part of the United Kingdom called England, to the Channel Islands, and the Isle of Man." Extent of Act.

Section 4. "Proceedings taken under this Act shall not be deemed to be such proceedings as are mentioned in the Act of the third and fourth year of the reign of Her Majesty, chapter eighty-six, section twenty-three." Proceedings  
under this Act  
not to be  
deemed pro-  
ceedings under  
3 & 4 Vict.  
c. 86, s. 23.

Section 5. "Nothing in this Act contained, save as herein expressly provided, shall be construed to affect or repeal any jurisdiction which may now be in force for the due administration of Ecclesiastical Law." Saving of juris-  
dict on.

The effect of this provision is that this Act creates merely an alternative course of procedure in respect of the very restricted and definite matters comprehended within it. Consequently it leaves intact all the existing Diocesan Courts and the jurisdiction if any in other respects of the ordinary. (*l*)

*Section 6.*

Section 6. "In this Act the following terms shall, if not inconsistent with the context, be thus interpreted—" Interpretation  
of terms.

"The term 'bishop' means the archbishop or bishop of the "Bishop."

[*l*] Compare the provisions of 3 & 4 Vict. c. 86.

Sect. 6.

diocese in which the church or burial ground is situate to which a representation relates : (*m*)

“Book of  
Common  
Prayer.”

“The term ‘Book of Common Prayer’ means the book annexed to the Act of the fourteenth year of the reign of King Charles the Second, chapter four, intituled ‘The Book of Common Prayer, and Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the use of the Church of England; together with the Psalter or Psalms of David, pointed as they are to be sung or said in churches; and the form or manner of making, ordaining, and consecrating of Bishops, Priests, and Deacons;’ together with such alterations as have from time to time been or may hereafter be made in the said book by lawful authority :

“Burial  
ground.”

“The term ‘burial ground’ means any churchyard, cemetery, or burial ground, or the part of any cemetery or burial ground, in which, at the burial of any corpse therein, the order for the burial of the dead contained in the Book of Common Prayer is directed by law to be used :

“Church.”

“The term ‘church’ means any church, chapel, or place of public worship in which the incumbent is by law or by the terms of license from the bishop required to conduct divine service according to the Book of Common Prayer :

“Diocese.”

“The term ‘diocese’ means the diocese in which the church or burial ground is situate to which a representation relates, and comprehends all places which are situate within the limits of such diocese :

“Incumbent.”

“The term ‘incumbent’ means the person or persons in holy orders legally responsible for the due performance of divine service in any church, or of the order for the burial of the dead in any burial ground :

“Parish.”

“The term ‘parish’ means any parish, ecclesiastical district,

(*m*) By sect. 16 the Archbishop is substituted for the Bishop when the latter is the patron or is infirm; and by sect. 17 the visitor is put in place of the bishop in the case of cathedral and collegiate churches.



chapelry, or place, over which any incumbent has the exclusive cure of souls : Sect. 6.

“The term ‘parishioner’ means a male person of full age who before making any representation under this Act has transmitted to the bishop under his hand the declaration contained in Schedule (A.) to this Act, and who has, and for one year next before taking any proceeding under this Act has had, his usual place of abode in the parish within which the church or burial ground is situate, or for the use of which the burial ground is legally provided, to which the representation relates : “Parishioner.”

“The term ‘barrister-at-law’ shall in the Isle of Man include advocate : (n) “Barrister-at-law.”

“The term ‘rules and orders’ means the rules and orders framed under the provisions of this Act.” “Rules and orders.”

“Burial ground” must be held to apply only to a consecrated piece of ground. (o)

“Church.” In *Rippin and Wilson v. Bastin*, (p) which case arose upon the construction of 5 Geo. IV. c. 36, s. 1, Sir Robert Phillimore said, “There can be no doubt that according to the ordinary interpretation, the word church would include chancel, and the statute I think uses the word church in the plain sense given it in common language.” Church includes chancel.

There are special provisions as to cathedral and collegiate churches in section 17.

See generally as to the varieties of churches and chapels *ante*, pp. 14-18, and as to licences from the bishop, *ante*, 17 and 307.

“Diocese.” For the definition of this term in the Church Discipline Act, see section 2 of that Act and the notes thereto. (q) Diocese.

“Incumbent.” As to the person legally responsible in cathedral and collegiate churches see section 17. Incumbent.

(n) See *Mouncey v. Robinson*, 37 L. J. Eccl. 8, *ante*, p. 368.

(o) See *Rugg v. Kingsmill*, L. R. 1 Adm. & Eccl. 243, and L. R. 2 P. C. 59.

(p) L. R. 2 Adm. & Eccl. 386.

(q) *Ante*, pp. 359-361.

Sect. 6.

The term as here defined, *i.e.* “the person legally responsible,” is very wide, but for greater caution section 8 expressly renders him liable in several cases if he permits certain matters to be done or omitted.

Parishioner.

“Parishioner” at Common Law denotes any person, whatever his creed, who whether resident or not is liable to contribute to the parochial rates and duties. Here it is doubly restricted to (1) churchmen (2) who have for the year previous been resident within the parish.

*Section 7.*Appointment  
and duties of  
judge.

Section 7. “The Archbishop of Canterbury and the Archbishop of York may, but subject to the approval of Her Majesty to be signified under her sign manual, appoint from time to time a barrister-at-law who has been in actual practice for ten years, or a person who has been a judge of one of the Superior Courts of Law or Equity, or of any court to which the jurisdiction of any such court has been or may hereafter be transferred by authority of Parliament, to be, during good behaviour, a judge of the Provincial Courts of Canterbury and York, hereinafter called the judge.

“If the said archbishops shall not, within six months after the passing of this Act, or within six months after the occurrence of any vacancy in the office, appoint the said judge, Her Majesty may by letters patent appoint some person, qualified as aforesaid, to be such judge.

Provision as  
to the Arches  
Court,

“Whensoever a vacancy shall occur in the office of official principal of the Arches Court of Canterbury, the judge shall become *ex officio* such official principal, and all proceedings thereafter taken before the judge in relation to matters arising within the province of Canterbury shall be deemed to be taken in the Arches Court of Canterbury; and whensoever a vacancy shall occur in the office of official principal or auditor of the Chancery Court of York, the judge shall become *ex officio* such official principal or auditor, and all proceedings thereafter taken

and as to the  
Chancery Court  
of York.

efore the judge in relation to matters arising within the pro- Sect. 7.  
vince of York shall be deemed to be taken in the Chancery  
Court of York; and whensoever a vacancy shall occur in the  
Office of Master of the Faculties to the Archbishop of Canter-  
bury, such judge shall become *ex officio* such Master of the  
Faculties.

“Every person appointed to be a judge under this Act shall  
be a member of the Church of England, and shall, before enter-  
ing on his office, sign the declaration in Schedule (A.) to this  
Act; and if at any time any such judge shall cease to be a  
member of the Church, his office shall thereupon be vacant.

“This section shall come into operation immediately after the  
passing of this Act.”

The “official principal of the Arches Court” is commonly Dean of Arches.  
known as the Dean of Arches. The two offices, however, are  
totally distinct, although they are now and have long been  
united in the same person. The official principal is, strictly  
speaking, the representative of the Archbishop of Canterbury,  
and as such the judge in the ordinary ecclesiastical matters.  
The Dean of Arches fills a similar office with respect to the  
ecclesiastical places which are exempt from the ordinary  
jurisdiction of the bishop, but subject to that of the archbishop.

This section, it will be observed, provides for the merging of  
the offices of the official principal both of Canterbury and York  
in the judge appointed under this Act.

*Section 8, clause A.*

Section 8, clause A. “If the archdeacon of the archdeaconry, Representation  
by archdeacon,  
or a churchwarden of the parish, or any three parishioners of the churchwarden,  
parish, within which archdeaconry or parish any church or burial parishioners, or  
ground is situate, or for the use of any part of which any burial inhabitants of  
ground is legally provided, or in case of cathedral or collegiate diocese.  
churches, any three inhabitants of the diocese, being male per-  
sons of full age, who have signed and transmitted to the bishop  
under their hands the declaration contained in Schedule (A)

Sect. 8.

under this Act, and who have, and for one year next before taking any proceeding under this Act have had, their usual place of abode in the diocese within which the cathedral or collegiate church is situated, shall be of opinion,"—

Who may be  
promoters—  
1. in ordinary  
cases ;

Here are the provisions with respect to the persons who may be promoters. The proceedings fall under two heads, according as they relate to ordinary churches and burial grounds, or to cathedral and collegiate churches. Proceedings of the former kind may be initiated, by,

- 1 the archdeacon,
- 2 a churchwarden, or
- 3 any three parishioners being
  - (a) males,
  - (b) of full age,
  - (c) members of the church,
  - (d) and for one year immediately preceding resident in the parish.

2. with respect to cathedrals, &c.

Proceedings of the second kind may be initiated by any three inhabitants of the diocese, who must satisfy the same conditions as are laid down for parishioners save that their residence may have been within the diocese.

#### *Section 8, clause B.*

Alteration of  
or addition to  
fabric, ornaments,  
&c.

Section 8, clause B. “(1.) That in such church any alteration in or addition to the fabric, ornaments, or furniture thereof has been made without lawful authority, or that any decoration forbidden by law has been introduced into such church ; or,”—

The purport of this clause and its exact legal effect are by no means clear. It must be first noted that by the concluding clause of the section, “no proceedings shall be taken *under this act* as regards any alteration in or addition to the *fabric* of the church completed five years before the commencement of such proceedings.” But there is no limitation with regard to the other matters mentioned in the clause.



Bearing this in mind, the clause is divisible into two parts, Sect. 8.  
The first portion ending at the words "lawful authority."

Now, first, *repairs* of the fabric, and it would seem of monuments and ornaments generally, may be done without a faculty, (r) provided the consent of the proper parties be obtained. In *Bardin v. Calcott*, (s) where one of the offences charged was the repair of a tomb without leave of the churchwardens, Sir H. Fust observed, "What is this offence? Not that of erecting any structure nor of making additions to it, but merely of repairing what had been already placed there by proper authority according to the custom of the parish. Then came the prohibition to do what had not been intended to be done, namely, to make any alterations, and the man continued only to restore and place every thing as it was before. No alteration or addition was actually made. The only conceivable fault then in this part of the case was that it was done without the leave of the churchwardens. It might have been proper to apply for leave; but the churchwardens were bound to grant it as far as their authority extended, and if they had not they would have been liable to the censure of the Court. It is of public consequence that monuments once built should be preserved, and if parties are not at liberty to repair, the object of obtaining leave to erect would be defeated. Monuments are memorials of great use in question of descent, and consequently in matters of family interest; and decency and propriety likewise require that they should not remain in a state of ruin and decay. It is rather the duty of churchwardens to encourage parishioners to provide that they may be put into repair than to obstruct others in doing it. The only fault in this instance was that the person so employed did not observe the proper formalities of making application."

Repairs of the fabric.  
*Veley v. Burder.*

When however the acts cease to be mere repairs and become "alterations in or additions to" the existing building or its  
&c.

(r) *Veley v. Burder*, 12 Ad. & Ell. 233, 305-9. See *Steward v. Francis*, Curt. 213.  
(s) 1 Hagg. Cons. 14.

Sect. 8. appurtenances, it is a different affair, and to legalize such faculty must be obtained. (*t*)

Ornaments and furniture. Secondly, the terms "ornaments" and "furniture" will doubt be construed as synonymous, and as having the meaning given to the former term by the Privy Council in *Westerton Liddell*, (*u*) if indeed that definition is to be adhered to.

Lawful authority. Thirdly, the "lawful authority" mentioned must mean the ordinary, who alone has the power to issue faculties. This power is reserved to him by the 14th section. As to what ornaments are lawful, see part i. chapters viii. and ix.

Fourthly, the clause says, "has been made." At present faculties may be obtained to confirm unauthorized proceedings after they are done. (*x*) If these words are construed literally and strictly, confirmatory faculties will be *pro tanto* abolished.

Forbidden decorations. The latter portion of the clause refers to forbidden "decorations." Here a change of language has been made from the former part of the clause, and the change, which is totally unnecessary, is somewhat confusing. Does "decoration" signify something which is not an "ornament"? If so, the wideness and generality of the latter expression is considerably restricted. Probably, however, this was not the intention. And if not, the whole clause taken together simply provides against any unlawful tampering with the "ornaments" of a church.

It must also be noticed, that whereas the former portion of the clause deals with alterations and additions made "without lawful authority," the latter refers only to the introduction of decorations "forbidden by law." The former is much wider than the latter, since lawful alterations and additions may be made "without lawful authority." Therefore, if there be any distinction between "ornaments" or "furniture" and "decoration," it may often happen that representations will lie with

(*t*) See *ante*, pp. 316-8, and the notes thereto, and especially *Hopton v. Minister of Kemerton*, 6 Notes of Cases, 74; *Hallack v. University of Cambridge*, 1 Q. B. 593; *Parker v. Leach*, L. R. 1 P. C. 312.

(*u*) See *ante*, pp. 220-2 and notes.

(*x*) See "Confirmatory Faculties," *ante*, part iii. chap. iii. sect. 3.

regard to articles of the former class which would not lie with Sect. 8.  
regard to the latter. (y)

Section 8, clause C.

Section 8, clause C. “(2.) That the incumbent has within the preceding twelve months used or permitted to be used in such church or burial ground any unlawful ornament of the minister of the church, or neglected to use any prescribed ornament or vesture; or,”—

With regard to this clause three points have to be noticed. The period.

First, the very short period of one year has been prescribed by way of limitation.

Secondly, the clause is divisible into two portions, in the former of which provision is made for the offence of using or permitting to be used any unlawful ornament of the minister. Here there is a distinct enactment that the incumbent shall be responsible for the usage of the proper “ornaments of the minister” by all persons engaged in the conduct of Divine Worship.

Thirdly, a representation may be made where the incumbent has “neglected to use any prescribed ornament or vesture.” For what a representation may be made.

The wording of this latter portion of the clause is peculiar, and requires careful consideration. The expressions are “any prescribed ornament” or “vesture.” Has ornament its usual and wide signification, or is it restricted, as in the former part of the clause, to “ornaments of the minister?” Either interpretation may fairly be attached to it. In favour of the first, *i. e.* the wider meaning, it will be observed, (a), that the preceding clause of this section contains no provision with respect to neglect to use the proper ornaments, and (b), that the term ornament seems to have been employed *simpliciter*, advisedly, and by way of opposition to “ornaments of the minister” and to “vesture.” On the other hand, and in support of the narrower meaning, it may be contended that the whole clause has reference solely to vest-

Clause divisible into two portions.

Meaning of “ornament” as here used.

(y) Compare *Sieveking & Evans v. Kingsford*, 36 L. J. Eccl. 1.



Sect. 8.

ments, and that consequently such a signification must be attached to the words used, as to make them refer to one and the same matter.

It will also be observed, that while express provision is made for the case where the incumbent *permits to be used*, there is not a similar provision when he *permits an omission*.

As to what are the proper ornaments of the minister, see *ante*, part i. chapter vii.

*Section 8, clause D.*

Failure of  
minister to  
observe direc-  
tions of Prayer  
Book.

Section 8, clause D. “(3.) That the incumbent has within the preceding twelve months failed to observe, or to cause to be observed, the directions contained in the Book of Common Prayer relating to the performance, in such church or burial ground, of the services, rites, and ceremonies ordered by the said book, or has made or permitted to be made any unlawful addition to, alteration of, or omission from such services, rites, and ceremonies,”—

Limitation.

Here as in the last clause the period of limitation is one year. It is also expressly provided that the incumbent shall be responsible for the malpractices of those engaged under or with him—if he “has failed to cause to be observed,” and if he “has permitted any unlawful addition, &c.” The clause applies equally to the two extreme parties within the church: to those who would abolish ceremonial, or at least cut it down to a minimum, as well as to those who in their zeal for outward observance and manual performance desire to transform the simple Anglican ritual into the mummerly of another creed. The provisions are quite as strict in respect of omission as of commission. The Church has considered that a certain amount of external show is requisite to secure the continued attention of some of its worshippers, and now there is a positive enactment that this amount shall be kept up.

It will be noticed that the concluding portion of the clause,



any unlawful addition, &c.," is taken verbatim from the rule Sect. 8.  
to ceremonial enunciated in *Westerton v. Liddell*. (z)

Section 8, clause E.

Section 8, clause E. "Such archdeacon, churchwarden, parishioners, or such inhabitants of the diocese, may, if he or they think fit, represent the same to the bishop, by sending to the bishop a form, as contained in Schedule (B) to this Act, duly filled up and signed, and accompanied by a declaration made by him or them under the Act of the fifth and sixth year of the reign of King William the Fourth, chapter sixty-two, affirming the truth of the statements contained in the representation: provided, that no proceedings shall be taken under this Act as regards any alteration in or addition to the fabric of a church if such alteration or addition has been completed five years before the commencement of such proceedings."

Representation of such failure, &c., by whom, and how,

The representation must apparently in every case be made directly to the bishop of the diocese, but by section 16, if he is the patron of the preferment or is unable to act through illness, the archbishop is to act for him; and if the archbishop is similarly incapacitated the Queen may appoint any other bishop or archbishop as a substitute.

and to whom to be made.

The form contained in Schedule B is as follows:—

"PUBLIC WORSHIP REGULATION ACT, 1874.

"To the Right Rev. Father in God, *A.*, by Divine permission, Lord Bishop of *B.*

"I, [We,] *C. D.*, Archdeacon of the archdeaconry of \_\_\_\_\_, [or a churchwarden or three parishioners of the parish of *E.*,] in your Lordship's diocese, do hereby represent that [the person or persons complained of] has or have [state the matter to be represented; if more than one, then under separate heads].

"Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_.

"(Signed) *C. D.*"

(z) As to which see *ante*, pp. 165-9.

Sect. 8.

The declaration to be made under 5 & 6 Will. IV. c. 62, as follows:—

“ I, A. B., do solemnly and sincerely declare, that  
 , and I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the 5th and 6th year of the reign of William IV., intituled ‘ an Act to repeal,’ &c.”

*Section 9, clause A.*

Proceedings on representation.

Section 9, clause A. “ Unless the bishop shall be of opinion after considering the whole circumstances of the case, that proceedings should not be taken on the representation, (in which case he shall state in writing the reason for his opinion, and such statement shall be deposited in the registry of the diocese, and a copy thereof shall forthwith be transmitted to the person or some one of the persons who shall have made the representation, and to the person complained of,) he shall within twenty-one days after receiving the representation transmit a copy thereof to the person complained of, and shall require such person, and also the person making the representation, to state in writing within twenty-one days whether they are willing to submit to the directions of the bishop touching the matter of the said representation, without appeal; and if they shall state their willingness to submit to the directions of the bishop without appeal, the bishop shall forthwith proceed to hear the matter of the representation in such manner as he shall think fit, and shall pronounce such judgment and issue such monition (if any) as he may think proper, and no appeal shall lie from such judgment or monition.

It seems now settled that, as to proceedings proposed to be instituted under 3 & 4 Vict. c. 86, the bishop has a discretion and may stop them in their inception. (a)

Whether the bishop has a discretion, *quære*.

It is also very generally assumed that this section gives him the same discretion. But this is by no means certain. Undoubtedly, if the debates in parliament upon the passing of the

(a) See *ante*, pp. 364-5.

Act be referred to, it was intended that the bishop should have a veto. There is, however, no express provision in that behalf. Sect. 9.

The clause simply says, "unless the bishop shall be of opinion, after considering the whole circumstances of the case, that proceedings should not be taken on the representation, in which case he shall state in writing the reason for his opinion, and such statement shall be deposited in the registry of the diocese."

A veto not given expressly,

It does not in so many words say that the bishop is to have a veto. It is argued that upon some such principle as the maxim,

"*expressio unius est exclusio alterius*," this sentence is an enactment that the bishop may stop proceedings. But such a construction requires that there be added to the clause, as to filing his reasons, &c., some such further proviso, as this, viz.,

"and thereupon all further proceedings in respect of such representation shall cease." But even this would not be sufficient. Other persons may make a second and a third representation with respect to the same matter; and as to this there is absolutely no enactment. Moreover, by the express enactment contained in the 3rd clause of this section, if the parties agree, they may "require" the bishop to have the matter heard in the form therein indicated, in which case, *ex necessitate rei*, the bishop can have no discretion. Upon the whole, the better and simpler construction would seem to be, since no positive and express power is given to the bishop to stop proceedings, and since, moreover, he has to file his reasons if he refuses to act, that the bishop has a discretion, but a discretion of a kind possessed by all public officials, subject to the control of the Court of Queen's Bench, who in the present case will consider the sufficiency of his reasons as filed.

nor impliedly, *semble*.

If both parties agree to submit to the bishop's direction without appeal, and only when they so agree, he may hear the matter in such manner as he may choose, and from his decision there is to be no appeal. This enactment is very similar to that contained in section 6 of the Church Discipline Act. (b)

Judgment by consent.

(b) See *ante*, p. 367.



*Section 9, clauses B and C.*

Sect. 9.

Judgment of  
bishop not to be  
considered  
finally deciding  
any question of  
law.

Section 9, clause B. "Provided, that no judgment so pronounced by the bishop shall be considered as finally deciding any question of law so that it may not be again raised by other parties."

This provision, though in some respects superfluous, is useful by way of precaution, and especially so if the bishop is to have a veto; because, though it refers directly to those cases where he adjudicates, yet it will also be some guide as to the importance of his decision where he refuses to act. It is moreover required on account of the different opinions on various ecclesiastical questions held by the different bishops.

Statement of a  
special case.

Section 9, clause C. "The parties may, at any time after the making of a representation to the bishop, join in stating any questions arising in such proceedings in a special case signed by a barrister-at-law for the opinion of the judge, and the parties after signing and transmitting the same to the bishop may require it to be transmitted to the judge for hearing, and the judge shall hear and determine the question or questions arising thereon, and any judgment pronounced by the bishop shall be in conformity with such determination."

This clause is of very doubtful import. Does it refer only to cases pending before a bishop? If so, then the procedure in such cases may take either of two forms—viz. (*a*) a hearing before and decision by the bishop, or in "such other manner as he shall think fit;" or (*b*) a hearing before the judge, and a judgment by the bishop, the hearing in such case by the judge being demandable as of right by the parties.

*Section 9, clause D.*

Proceedings if  
the parties are  
not willing to  
submit to the  
directions of the  
bishop.

Section 9, clause D. "If the person making the representation and the person complained of shall not, within the time aforesaid, state their willingness to submit to the directions of the bishop, the bishop shall forthwith transmit the representa-



tion in the mode prescribed by the rules and orders to the arch-  
bishop of the province, and the archbishop shall forthwith re-  
quire the judge to hear the matter of the representation at any  
place within the diocese or province, or in London or West-  
minster.

Sect. 9.

“ The judge shall give not less than twenty-eight days’  
notice to the parties of the time and place at which he will pro-  
ceed to hear the matter of the said representation. The judge  
before proceeding to give such notice shall require from the  
person making the representation such security for costs as the  
judge may think proper, such security to be given in the manner  
prescribed by the rules and orders.

Notice of  
hearing ;

security for  
costs ;

“ The person complained of shall within twenty-one days  
after such notice transmit to the judge, and to the person  
making the representation, a succinct answer to the representa-  
tion, and in default of such answer he shall be deemed to have  
denied the truth or relevancy of the representation.”

answer of the  
defendant.

These three paragraphs indicate very briefly the course of  
procedure down to the hearing. The bishop having entertained  
the representation, the steps are as follows :—

Course of pro-  
cedure.

1. Notice must be given to the parties, who have twenty-one  
days to determine whether they are willing to abide by the de-  
cision of their diocesan or visitor, as the case may be.

2. If within this period they do not state their willingness, the  
representation must forthwith be transmitted to the archbishop of  
the province.

3. The archbishop shall forthwith require the judge to hear  
the matter, the judge, of course, having no option. (c)

4. The judge must require the promoters to give security for  
costs. This is a condition precedent to any further steps, and it  
apparently abolishes all causes *in formâ pauperis*, and also,  
unless merely nominal security be imposed, all purely frivolous  
litigation.

5. The necessary security being entered into, the judge is to

(c) *Sheppard v. Phillimore*, L. R. 2 P. C. 450 ; *ante*, p. 371.

Sect. 9.

give not less than twenty-eight days' notice of the hearing. No doubt such period will be increased upon proper cause shown.

6. Within twenty-one days after such notice the defendant is to put in his answer, failing which he will be deemed to have traversed the representation both in fact and in law.

*Section 9, clauses E and F.*

Evidence, witnesses, &c. in proceedings under this Act.

Section 9, clause E. "In all proceedings before the judge under this Act the evidence shall be given *vivâ voce*, in open court, and upon oath; and the judge shall have the powers of a court of record, and may require and enforce the attendance of witnesses, and the production of evidences, books, or writings, in the like manner as a judge of one of the superior courts of law or equity, or of any court to which the jurisdiction of any such court has been or may hereafter be transferred by authority of Parliament."

Rules as to a special case.

Section 9, clause F. "Unless the parties shall both agree that the evidence shall be taken down by a shorthand writer, and that a special case shall not be stated, the judge shall state the facts proved before him in the form of a special case, similar to a special case stated under the Common Law Procedure Acts, 1852-1854."

The hearing.

Here are contained the regulations as to the hearing. The points requiring notice are—

1. The court of the judge is to be a court as of record.
2. For all purposes incidental to the hearing the judge is endued with all the powers of a judge of a superior court.
3. The hearing is to be in open court.
4. The evidence must be given *vivâ voce*, and *upon oath*. It is not said *oath or affirmation*, since the only parties and witnesses contemplated are members of the Church of England. (*d*)

Provisions in view of appeal.

In view of an appeal, provision is made for securing a true

(*d*) As to evidence see *ante*, pp. 339-340.

and correct statement of the facts proved by enacting that Sect. 9.  
either—

1. The evidence may, at the option of the parties, be taken down by a shorthand writer ; or,

2. If they do not agree as to this, then the judge is to state the facts in the form of a special case:

Section 9, clause G.

Section 9, clause G. “ The judge shall pronounce judgment The Judgment.  
on the matter of the representation, and shall deliver to the parties, on application, and to the bishop, a copy of the special case, if any, and judgment.

“ The judge shall issue such monition (if any) and make such order as to costs as the judgment shall require.”

These two clauses relate to the judgment. This is to be a written one. The judge has full control of the costs. (e) He Costs.  
may issue a monition (f) directing how his judgment is to be Monition.  
carried out, and if this involves any such dealing with a sacred building or its appurtenances, as under ordinary circumstances would require a faculty, yet a faculty shall not be needed to Faculty.  
legalize any acts done in obedience to his judgment, unless he expressly directs application to be made for one. (g)

Section 9, clauses H and I.

Section 9, clause H. “ Upon every judgment of the judge, or Appeal to Privy  
monition issued in accordance therewith, an appeal shall lie, in Council.  
the form prescribed by rules and orders, to Her Majesty in Council.”

This clause gives the appeal *ex delicto justitiæ*, not only from a judgment condemnatory of the matters complained of, but also from one which merely declares the law, or is against the contention of the promoters, as well as from a monition directing proceedings to be taken for the due carrying out of the judgment. The right to appeal from interlocutory orders is not

(e) As to costs see *ante*, pp. 297-8.

(f) As to monitions see *ante*, pp. 275-6.

(g) Sect. 14.



Sect. 10.

given by direct words in that behalf, but probably the expression "every judgment," will be deemed wide enough for this purpose. (*b*)

Stay of proceedings pending an appeal.

Section 9, clause I. "The judge may, on application in any case, suspend the execution of such monition, pending an appeal, if he shall think fit."

Hitherto, in Ecclesiastical causes, an appeal has suspended the execution of the judgment, and an incriminated clerk has thereby been enabled to continue, during the pendency of the appeal, his unlawful proceedings. This clause puts a considerable check upon such conduct. A similar provision is contained in the 58th rule in the schedule annexed to the Supreme Court of Judicature Act: (*i*) "An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the Court appealed from, or any judge thereof, or the Court of Appeal may so order; and no intermediate act or proceeding shall be invalidated, except so far as the Court appealed from may direct."

#### *Sections 10 and 11.*

Registrar of the diocese to perform duties under the Act.

Section 10. "The registrar of the diocese, or his deputy duly appointed, shall perform such duties in relation to this Act and shall receive such fees as may be prescribed by the rules and orders.

Parties may appear in person, or by counsel, &c.

Section 11. "In any proceedings under this Act either party may appear either by himself in person or by counsel, or by any proctor or any attorney or solicitor."

Who may practise in the Ecclesiastical Courts.

This section throws open the practice in the new court to all solicitors. Prior to the statute 33 & 34 Vict. c. 28, only proctors were eligible to conduct business in any of the Ecclesiastical Courts. (*j*) On the creation of the Courts of Probate and Divorce,

(*h*) Compare 3 & 4 Vict. c. 86, s. 13.

(*i*) 36 & 37 Vict. c. 66.

(*j*) See 53 Geo. III. c. 127, s. 9; and *Fell v. Bond*, 1 Rob. Eccl. 740. Compare 54 Geo. III. c. 68, ss. 9, 10; and *Stephenson v. Higginson*, 3 H. L. Cas. 638.



solicitors were admitted to those courts by the statutes constituting them. (*k*) Two years later the Court of Admiralty was similarly opened to all legal practitioners. (*l*)

Finally, the statute cited (*ll*) opened the local Ecclesiastical Courts to solicitors, but section 20 impliedly excepts the more important tribunals:—"From and after the passing of this Act it shall be lawful for an attorney or solicitor to perform all such acts as appertain solely to the office of a proctor in any Ecclesiastical Court other than the Provincial Courts of the Archbishops of Canterbury and of York, and the Diocesan Court of the Bishop of London, without incurring any forfeiture or penalty, and to make the same charges which a proctor would be entitled to make, and to recover the same, any enactment or enactments to the contrary notwithstanding."

33 & 34 Vict. c. 28 opens the local Ecclesiastical Courts.

In *Burch v. Reid* (*m*) Sir Robert Phillimore determined that this section taken in connection with the former usage in this respect, limits the practice in the Arches Court to duly qualified proctors.

Arches Court is limited to proctors.

In the Privy Council it is now different. By an order in Council made the 31st of March, 1871, it was provided that every proctor, solicitor, or attorney practising in London, and duly admitted in any of the Courts of Westminster, shall be allowed to subscribe the declaration in the order, and to practise in the Privy Council, upon the production of his certificate for the current year.

Privy Council.

### Section 12.

Section 12. "For the purpose of an appeal to Her Majesty in Council under this Act, the special case settled by the judge, or a copy of the shorthand writer's notes, as the case may be, shall be transmitted in the manner prescribed by rules and orders,

What evidence to be admitted on appeal.

(*k*) See 20 & 21 Vict. c. 77, s. 45; and 20 & 21 Vict. c. 85, s. 15.

(*l*) By 22 & 23 Vict. c. 6, s. 1.

(*ll*) *i.e.* 33 & 34 Vict. c. 28.

(*m*) L. R. 4 Adm. & Eccl. 112. Compare *Voysey v. Noble*, L. R. 3 P. C. 357.

Sect. 12.

and no fresh evidence shall be admitted upon appeal except by the permission of the tribunal hearing the appeal."

As to fresh evidence,

and new points on appeal.

Courts of Appeal of every description have inherent in them, unless taken away by express enactment, the power to receive fresh and further evidence (*n*), or to allow new points to be raised (*o*), but they are slow to permit this (*p*). The Supreme Court of Judicature Act contains the following provision in this behalf (*q*): "The Court of Appeal shall have all the powers and duties as to amendment and otherwise of the Court of First Instance, together with full discretionary powers to receive further evidence upon questions of fact, such evidence to be either by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a decree or judgment upon the merits, at the trial or hearing of any action or matter, such further evidence (save as aforesaid) shall be admitted on special grounds only, and not without special leave of the Court."

*Section 13, clause A.*

Obedience enforced.

1. Inhibition of incumbent for three months.

Section 13, clause A. "Obedience by an incumbent to a monition or order of the bishop or judge, as the case may be, shall be enforced, if necessary, in the manner prescribed by rules and orders, by an order inhibiting the incumbent from performing any service of the church or otherwise exercising the cure of souls within the diocese for a term not exceeding three months; provided that at the expiration of such term the inhibition shall

(*n*) *Smith v. Justices of Sierra Leone*, 3 Moo. P. C. C. 361. *The Laura*, 3 Moo. P. C. C. (N. S.) 181; *The Scindia*, 4 Moo. P. C. C. (N. S.) 84. See 3 & 4 Will. IV. c. 41, ss. 7, 8.

(*o*) *Lawson v. Carr*, 10 Moo. P. C. C. 162; *Escott v. Mastin*, 4 Moo. P. C. C. 104; *Voysey v. Noble*, L. R. 3 P. C. 357, 365.

(*p*) *Craig v. Farnall*, 6 Moo. P. C. C. 446; *Watson v. Colby*, 6 Moo. P. C. C. 334.

(*q*) 36 & 37 Vict. c. 66, schedule, rule 52.

not be relaxed until the incumbent shall, by writing under his hand, in the form prescribed by the rules and orders, undertake to pay due obedience to such monition or order, or to the part hereof which shall not have been annulled; provided that if such inhibition shall remain in force for more than three years from the date of the issuing of the monition, or from the final determination of an appeal therefrom, whichever shall first happen, or if a second inhibition in regard to the same monition shall be issued within three years from the relaxation of an inhibition, any benefice or other ecclesiastical preferment held by the incumbent in the parish in which the church or burial ground is situate, or for the use of which the burial ground is legally provided, in relation to which church or burial ground such monition has been issued as aforesaid, shall thereupon become void, unless the bishop shall, for some special reason stated by him in writing, postpone for a period not exceeding three months the date at which, unless such inhibition be relaxed, such benefice or other ecclesiastical preferment shall become void as aforesaid; and upon any such avoidance it shall be lawful for the patron of such benefice or other ecclesiastical preferment to appoint, present, collate, or nominate to the same as if such incumbent were dead; and the provisions contained in the Act of the first and second year of the reign of Her Majesty, chapter one hundred and six, section fifty-eight, in reference to notice to the patron and as to lapse, shall be applicable to any benefice or other ecclesiastical preferment avoided under this Act; and it shall not be lawful for the patron at any time to appoint, present, collate, or nominate to such benefice or such other ecclesiastical preferment the incumbent by whom the same was avoided under this Act."

Sect. 13.

2. If inhibition remains more than three years, or

3. Second inhibition,

the benefice, &amp;c. to become void.

Little need be added by way of comment to the very clear provisions contained in this clause. Hitherto the almost invariable punishment for disobedience to the orders of an Ecclesiastical Court in respect of ritual or ornaments has been a reprimand.



Sect. 13.

mand and the costs of the proceedings. Seldom has the Court proceeded to suspension (*r*) and never yet has it deprived a recalcitrant clerk. (*s*) Now the remedy is much sharper and decisive: first, a monition; next, "if necessary," an inhibition for a period not exceeding three months; then a repetition, or rather a continuance of the inhibition if satisfactory obedience be not rendered; finally, deprivation. (*t*)

Provisions as  
to patron re-  
ferred to sect.  
13, clause A.

The provisions as to notice to the patron, &c., referred to in this clause are as follows: (*tt*) "If the benefice of any spiritual person shall continue for the space of one whole year under sequestration issued under the provisions of this Act for disobedience to the bishop's monition or order requiring such spiritual person to reside on his benefice, or if such spiritual person shall under the provisions of this Act incur two such sequestrations in the space of two years, and shall not be relieved with respect to either of such sequestrations upon appeal, such benefice shall thereupon become void and it shall be lawful for the patron of such benefice to make donation or to present or nominate to the same as if such spiritual person were dead; and the bishop on such benefice so becoming void shall give notice in writing under his hand to such patron, which notice shall either be delivered to such patron, or left at his usual place of abode, or if such patron or place of abode shall be unknown or shall be out of England, such notice shall be twice inserted in the 'London Gazette,' and also twice in some newspaper printed and usually circulated in London, and in some other newspaper usually circulated in the neighbourhood of the place where such benefice is situate, and for the purpose of lapse the avoidance of the benefice

(*r*) See *Martin v. Mackonochie*, L. R. 3 P. C. 409, where for reiterated contempts the defendant was inhibited *ab officio* for three months; and *Hebbert v. Purchas*, L. R. 4 P. C. 301, where under aggravated circumstances there was suspension *ab officio et a beneficio* for a year. See also *ante*, pp. 296-7.

(*s*) Compare the observations of the Privy Council, L. R. 4 P. C. 31. See also *ante*, p. 282, and note *s* thereto.

(*t*) As to deprivation see *ante*, pp. 289-292. (*tt*) 1 & 2 Vict. c. 106, s. 5.



ce shall be reckoned from the day on which such notice shall Sect. 13.  
 ave been delivered as aforesaid, on which six months shall  
 ave expired after the second publication of such notice in the  
 London Gazette,' as the case may be, and every such notice  
 in the gazette and newspapers shall state that the patron or  
 ne place of abode of the patron is unknown, or that he is said  
 o be out of England as the case may be, and that the benefice  
 ill lapse at the farthest after the expiration of one year from  
 e second publication thereof as aforesaid, and upon any such  
 voidance it shall not be lawful for the patron to appoint by  
 onation or present, or nominate to such benefice so avoided the  
 erson by reason of whose non-residence the same was so  
 voided."

Section 13, clauses B and C.

Section 13, clause B. "The bishop may, during such inhi- The bishop  
 tion, unless he is satisfied that due provision is otherwise made during inhibi-  
 r the spiritual charge of the parish, make due provision for the tion may make  
 rvice of the church and the cure of souls, and it shall be lawful due provision  
 r the bishop to raise the sum required from time to time for for service of  
 ch provision by sequestration of the profits of such benefice or church and  
 her ecclesiastical preferment." cure of souls.

From this it seems that the suspension may be either *ab* Suspension.  
*officio* or both *ab officio et a beneficio*. As to sequestration, see Sequestration.  
 te, pp. 283-9.

Section 13, clause C. "Any question as to whether a mo- Questions as to  
 tion or order given or issued after proceedings before the obedience of  
 bishop or judge, as the case may be, has or has not been obeyed, monition or  
 all be determined by the bishop or the judge, and any pro- order to be de-  
 ceedings to enforce obedience to such monition or order shall termined by  
 taken by direction of the judge." bishop or judge.

It will be observed that though this clause enacts that the  
 bishop and the judge shall respectively decide all matters and  
 questions which may arise out of, or as incidental to, their re-  
 spective monitions or orders, yet it carefully directs that "pro-

Sect. 13.

ceedings to enforce obedience to such monition or order," in other words all proceedings with respect to suspension or deprivation, shall be taken by order of the judge only.

*Section 14.*

Faculty not  
necessary in  
certain cases.

Section 14. "It shall not be necessary to obtain a faculty from the ordinary in order lawfully to obey any monition issued under this Act, and if the judge shall direct in any monition that a faculty shall be applied for, such fees only shall be paid for such faculty as may be directed by the rules and orders; provided that nothing in this Act contained shall be construed to limit or control the discretion vested by law in the ordinary as to the grant or refusal of a faculty: provided also, that a faculty shall, on application, be granted, if unopposed, on payment of such a fee (not exceeding two guineas) as shall be prescribed by the rules and orders, in respect of any alteration in or addition to the fabric of any church, or in respect of any ornaments or furniture, not being contrary to law, made or existing in any church at the time of the passing of this Act."

Jurisdiction of  
Ordinary is  
preserved.

The object of this clause is quite clear, viz., to preserve to the ordinary his existing exclusive authority in respect of faculties. (u) But the clause is both derogatory to the dignity, and it not improbably will produce needless litigation and contradictory decisions. Suppose the judge decides that certain alterations or ornaments are unlawful, and directs a faculty to be obtained for their removal. This application will, or at least may, in due course come before the judge of one of the two Provincial Courts, and it is quite possible that he may differ from the judge appointed under this Act and may decline to grant the faculty. (x)

(u) As to faculties see part ii. chap. iii.

(x) Compare the opposed judgments of Mr. Justice Keating and Sir Robert Phillimore in the "Exeter Reredos Case," *Phillpotts v. Boyd*, reported in the "Times" of April 16th and August 7th, 1874; *ante*, pp 254-5. The judgment of Sir Robert Phillimore, which reversed that of Mr. Justice Keating *in toto*, has been affirmed by the Privy Council a

*Sections 15 and 16.*

Section 15. "All notices and other documents directed to be given to any person under this Act shall be given in the manner prescribed by rules and orders.

Sect. 15.  
Service of  
notices.

Section 16. "If any bishop shall be patron of the benefice or of any ecclesiastical preferment held by the incumbent respecting whom a representation shall have been made, or shall be unable from illness to discharge any of the duties imposed upon him by this Act in regard to any representation, the archbishop of the province shall act in the place of such bishop in all matters hereafter arising in relation to such representation; and if any archbishop shall be patron of the benefice or of any ecclesiastical preferment held by the incumbent respecting whom a representation shall have been made, or shall be unable from illness to discharge any of the duties imposed upon him by this Act in regard to any representation, Her Majesty may, by her sign manual, appoint an archbishop or bishop to act in the place of such archbishop in all matters thereafter arising in relation to such representation.

Substitute for  
bishop when  
patron, or in  
case of illness.

*Section 17, clause A.*

Section 17, clause A. "The duties appointed under this Act to be performed by the bishop of the diocese shall in the case of a cathedral or collegiate church be performed by the visitor thereof.

Provisions relating to cathedral or collegiate church.

"If any complaint shall be made concerning the fabric, ornaments, furniture, or decorations of a cathedral or collegiate church, the person complained of shall be the dean and chapter of such cathedral or collegiate church, and in the event of obedience not being rendered to a monition relating to the fabric, ornaments, furniture, or decorations of such cathedral or collegiate church, the visitor or the judge, as the case may be, shall

When the  
Dean and  
Chapter to be  
the defendants.

regards the legality of a reredos, but reversed as regards the exemption of the Dean and Chapter from the jurisdiction of the ordinary. See "Times," Feb. 26th, 1875.



Sect. 17.

have power to carry into effect the directions contained in such monition, and, if necessary, to raise the sum required to defray the cost thereof by sequestration of the profits of the preferments held in such cathedral or collegiate church by the dean and chapter thereof."

This clause provides that the dean and chapter shall be responsible for all matters relating to the fabric and ornaments, that is, for the various matters treated of in part i., chapters viii. and ix. The course of proceedings to be taken will be the same as under ordinary circumstances up to judgment. If the decree made be duly observed the suit ends; but if obedience be not rendered, then,

(1) There is the express and somewhat superfluous enactment that "the visitor or judge, as the case may be, shall have power to carry into effect the directions contained in the monition," which apparently gives him authority similar to that contained in section 13, viz., to suspend, and if necessary, even to deprive the recalcitrant dean and chapter.

(2) There is the special provision that the visitor or judge may, if need be, raise the money required for the carrying out and effectuating the decree by the sequestration of the profits of the preferment. (y)

*Section 17, clause B.*

Complaints concerning ornaments, &c. of a minister in a cathedral or collegiate church.

Section 17, clause B. "If any complaint shall be made concerning the ornaments of the minister in a cathedral or collegiate church, or as to the observance therein of the directions contained in the Book of Common Prayer, relating to the performance of the services, rites, and ceremonies ordered by the said book, or as to any alleged addition to, alteration of, or omission from such services, rites, and ceremonies in such cathedral or collegiate church, the person complained of shall be the clerk in holy orders alleged to have offended in the matter

(y) Compare sect. 13 and notes thereto, *ante*, pp. 408-411.



complained of; and the visitor or the judge, as the case may be, Sect. 17.  
 in the event of obedience not being rendered to a monition, shall  
 have the same power as to inhibition, and the preferment held  
 in such cathedral or collegiate church by the person complained  
 of shall be subject to the same conditions as to avoidance, notice,  
 and lapse, and as to any subsequent appointment, presentation,  
 collation, or nomination thereto, and as to due provision being  
 made for the performance of the duties of such person, as are  
 contained in this Act concerning an incumbent to whom a  
 monition has been issued, and concerning any benefice or other  
 ecclesiastical preferment held by such incumbent."

The effect of this clause is to make the party actually offend-  
 ing in respect of the subjects set forth, viz., matters of Ritual and  
 Ceremonial (z), responsible for the offence. It is not to be the  
 dean and chapter or any other ecclesiastical superior. Nor is he  
 liable, as in ordinary cases, (a) for the misdeeds or shortcomings of  
 others. The enactment is "the person complained of shall be  
 the clerk in holy orders alleged to have offended in the matter  
 complained of," and not who has permitted unlawful omissions,  
 variations, &c., to be done by others in the services where he  
 aids.

Who respon-  
 sible.

As to inhibition, deprivation, &c., see part ii. chapter i. sec-  
 tion 3.

### *Section 18.*

Section 18. "When a sentence has been pronounced by con-  
 court, or any suit or proceeding has been commenced against any  
 incumbent under the Act of the third and fourth year of the  
 reign of Her Majesty, chapter eighty-six, he shall not be liable  
 to proceedings under this Act in respect of the same matter;  
 and no incumbent proceeded against under this Act shall be  
 liable to proceedings under the said Act of the third and fourth

Limitation of  
 proceedings  
 against incum-  
 bent.

(z) As to which see part i. chaps. iii., iv., v. and vi.

(a) See sect. 8, *ante*, pp. 394-400.

Sect. 18.

year of the reign of Her Majesty, in respect of any matter upon which judgment has been pronounced under this Act."

These enactments secure parties from vexatious litigation. Proceedings may be commenced under either the Church Discipline Act or the present statute, but not under both in respect of the same matter, and proceedings once initiated, even though subsequently dropped, will be a bar to any future similar proceedings.

*Section 19.*

Rules for settling procedure and fees under this Act.

Section 19. "Her Majesty may by Order in Council, at any time either before or after the commencement of this Act, by and with the advice of the Lord High Chancellor, the Lord Chief Justice of England, the judge to be appointed under this Act, and the archbishops and bishops who are members of Her Majesty's Privy Council, or any two of the said persons, one of them being the Lord High Chancellor or the Lord Chief Justice of England, cause rules and orders to be made for regulating the procedure and settling the fees to be taken in proceedings under this Act, so far as the same may not be expressly regulated by this Act, and from time to time alter or amend such rules and orders. All rules and orders made in pursuance of this section shall be laid before each House of Parliament within forty days after the same are made, if Parliament is then sitting, or if not, within forty days after the then next meeting of Parliament; and if an address is presented to Her Majesty by either of the said Houses within the next subsequent forty days on which the House shall have sat praying that any such rules may be annulled, Her Majesty may thereupon by Order in Council annul the same, and the rule and orders so annulled shall thenceforth become void, without prejudice to the validity of any proceedings already taken under the same."

CHAPTER VII.

THE COURT OF FINAL APPEAL.

SECTION I.—*Appeals previous to 1833.*



FROM the earliest period of English history appeals in Ecclesiastical as in temporal causes have been allowed, in theory if not in practice, from the inferior courts to, in the last resort, the Sovereign himself, or some tribunal representative of him or endowed with authority delegated in that behalf by him. In the reigns of Stephen and Henry II. the Bishop of Rome extending his power in this as in other respects constituted himself the substitute of the Sovereign in this matter. Thenceforward for three centuries appeals were taken to Rome, not however without frequent complaints and objections from the English people and Parliament.

Ecclesiastical  
appeals in the  
middle ages.

But the Reformation and Legislation under Henry VIII. in connection with that event, abolished every shadow and pretence of jurisdiction claimed by the Bishop of Rome in appeals as in other matters Ecclesiastical.

Reformation.

By 24 Hen. VIII. c. 12, ss. 1 & 2, it is enacted "That all causes testamentary, causes of matrimony, and divorces, rights of tithes, oblations, and obventions shall be finally determined within the King's jurisdiction and authority and not elsewhere, any foreign appeals to the see of Rome or to any other foreign courts or potentates to the let or impediment thereof in any wise notwith-

24 Hen. VIII.  
c. 12.

standing. And if any person shall procure from the see of Rome or any other foreign court any appeal in any the causes aforesaid or execute any process concerning the same, he shall incur a præmunire . . . . As also that all the spiritual prelates, pastors, ministers, and curates, within this realm and the dominions of the same, shall and may use, minister, execute, and do or cause to be used, executed, ministered, and done, all sacraments, sacramentals, Divine services, and all other things within the said realm and dominions unto all the subjects of the same as Catholic and Christian men owen to do, any former citations, processes, inhibitions, suspension, interdictions, excommunications or appeals, for or touching the causes aforesaid from or to the see of Rome or any other foreign prince or foreign courts to the let or contrary thereof in any wise notwithstanding."

25 Hen. VIII.  
c. 19.

By way of additional precaution it is provided by 25 Hen. VIII. c. 19, s. 3: "That from the Feast of Easter which shall be in the year of our Lord God 1534, no manner of appeals shall be had, provoked, or made out of this realm or out of any of the King's dominions to the Bishop of Rome nor to the See of Rome in any causes or matters happening to be in contention, and having their commencement and beginning in any of the courts within this realm or within any the King's dominions, of what nature, condition, or quality soever they be of, but that all manner of appeals of what nature or condition soever they be of, or what cause or matter soever they concern, shall be made and had by the parties aggrieved or having cause of appeal after such manner, form, and condition, as is limited for appeals to be had and prosecuted within this realm in causes of matrimony, tithes, oblations, and obventions by a statute thereof made and established since the beginning of this present Parliament, and according to the form and effect of the said estatute, any usage, custom, prescription, or any thing or things to the contrary hereof notwithstanding."



And by section 5, “If any person or persons at any time after the said Feast of Easter provoke or sue any manner of appeals of what nature or condition soever they be of to the said Bishop of Rome or to the See of Rome, or do procure or execute any manner of process from the See of Rome or by authority thereof to the derogation or let of the due execution of this Act or contrary to the same, that then every such person or persons so doing, their aiders, counsellors, and abettors, shall incur and run into the dangers, pains, and penalties contained and limited in the Act of Provision and Præmunire made in the 16th year of the King’s most noble progenitor, King Richard the Second, against such as sue to the Court of Rome against the King’s Crown and Prerogative Royal.”

Provisions as to the mode of conducting appeals are contained in 24 Hen. VIII. c. 12. Section 5 enacts:—“That in such cases where heretofore any of the King’s subjects or resiants have used to pursue, provoke, or procure any appeal to the See of Rome, and in all other cases of appeal in or for any of the causes aforesaid, they may and shall from henceforth take, have, and use their appeals within this realm and not elsewhere, in manner and form as hereafter ensueth and not otherwise, that is to say, first, from the archdeacon, or his official, if the matter or cause be there begun, to the bishop diocesan of the said see if in case any of the parties be grieved.

Course of procedure on appeal.

Section 6: “And in like wise, if it be commenced before the bishop diocesan or his commissary from the bishop diocesan, or his commissary within fifteen days next ensuing, the judgment or sentence thereof there given to the archbishop of the province of Canterbury, if it be within his province, and if it be within the province of York then to the archbishop of York, and so likewise to all other archbishops in other the King’s dominions, as the case by order of justice shall require, and there to be definitively and finally ordered, decreed, and adjudged according to justice, without any other appellation or provocation to any other person or persons, court or courts.

Section 7. "And if the matter or contention for any of the causes aforesaid be or shall be commenced by any of the King's subjects or resiants before the archdeacon or any archbishop, or his commissary, then the party grieved shall or may take his appeal, within fifteen days next after judgment or sentence there given, to the Court of the Arches or Audience of the same Archbishop, and from the said Court of the Arches or Audience, within fifteen days then next ensuing after judgment or sentence there given, to the archbishop of the same province, there to be definitively and finally determined, without any other or further process or appeal thereupon to be had or sued.

Section 8. "And all and every matter, cause, and contention now depending, or that hereafter shall be commenced by any of the King's subjects or resiants, for any of the causes aforesaid, before any of the said archbishops, that then the same matter or matters, contention or contentions, shall be before the same archbishop where the said cause or process shall be so commenced, definitively determined, decreed or adjudged, without any other appeal, provocation, or any other foreign process out of this realm, to be sued to the let or derogation of the said judgment, sentence, or decree otherwise than is by this Act limited and appointed, saving always the prerogative of the Archbishop and Church of Canterbury, in all the foresaid causes of appeals to him and to his successors, to be sued within this realm, in such and like wise as they have been accustomed and used to have heretofore."

Commiss-  
sioners, or  
High Court of  
Delegates.

Lastly, to secure that justice shall in every case be done, the statute 25 Hen. VIII. c. 19, contains, in section 4, this further provision: "And for lack of justice, at or in any of the courts of the archbishops of this realm, or in any the King's dominions, it shall be lawful to the parties grieved to appeal to the King's Court of Chancery; and that upon every such appeal, a commission shall be directed, under the Great Seal, to such persons as shall be named by the King's highness, his heir

or successors, like as in case of appeal from the Admiral's Court, to hear and definitively determine such appeals, and the causes concerning the same. Which commissioners, so by the King's highness, his heirs or successors, to be named or appointed, shall have full power and authority to hear and definitively determine every such appeal, with the causes and all circumstances concerning the same; and that such judgment and sentence as the said commissioners shall make and decree in and upon any such appeal shall be good and effectual, and also definitive; and no further appeals to be had or made from the said commissioners for the same."

This section created the tribunal which constituted, down to very recent times, the Court of Final Appeal in Ecclesiastical Causes. The commissioners appointed under the Great Seal were styled delegates, and their court was known as the High Court of Delegates.

Their sentence was definitive, and no further appeal lay from it. (b) But upon petition to the Sovereign in Council, a rehearing might be directed. This was done by appointing a Commission of Review to reconsider the matter, and, if necessary, modify or reverse the judgment already given. (c) This commission, though not unseldom granted, was purely a matter of grace, and was never allowed if it would work hardship. (d)

Judgment of  
the delegates.

Commission of  
Review.

## SECTION II.—*The Privy Council.*

**T**HE Privy Council was constituted the Court of Appeal in Ecclesiastical Causes by two statutes passed in the years 1832 and 1833. (e)

The former 2 & 3 Will. IV. c. 92 provided, by section 1, 2 & 3 Will. IV. c. 92.

(b) *Saul v. Wilson*, 2 Vern. 118.

(c) 4 Inst. 341; *Poole v. Bishop of London*, 14 P. C. C. 262, 7 Jur. (N. S.)

347.

(d) See *Henshaw & Hadfield v. Atkinson*, 1 Lee, 239, where three Commissions of Review were granted. As to refusing the Commission see *Engleton v. Kingston*, 8 Ves. 438.

(e) See also 6 & 7 Vict. c. 38; 7 & 8 Vict. c. 69; 14 & 15 Vict. c. 83.



that the statute 25 Henry VIII. c. 19, so far as it relates to the power of appeal and to the appointment of delegates, should be repealed from 1st February, 1833; and by section 3, that from 1st February, 1833, the powers of the High Court of Delegates should be transferred to the King in Council, and no Commission of Review should be thereafter granted.

The latter statute, 3 & 4 Will. IV. c. 41, is a very important enactment, with regard to the general powers and constitution of the Privy Council as a judicial tribunal. The provisions which more especially relate to Ecclesiastical Causes are the following:—

3 & 4 Will.  
IV. c. 41.

Certain persons  
to form a com-  
mittee, to be  
styled "The  
Judicial Com-  
mittee of the  
Privy Council."

Section 1. "The President for the time being of His Majesty's Privy Council, the Lord High Chancellor of Great Britain for the time being, and such of the members of His Majesty's Privy Council as shall from time to time hold any of the offices following, that is to say, the office of Lord Keeper or First Lord Commissioner of the Great Seal of Great Britain, Lord Chief Justice or Judge of the Court of King's Bench, Master of the Rolls, Vice-Chancellor of England, Lord Chief Justice or Judge of the Court of Common Pleas, Lord Chief Baron or Baron of the Court of Exchequer, Judge of the Prerogative Court of the Lord Archbishop of Canterbury, Judge of the High Court of Admiralty, and Chief Judge of the Court in Bankruptcy, and also all persons, members of His Majesty's Privy Council who shall have been president thereof, or held the office of Lord Chancellor of Great Britain, or shall have held any of the other offices hereinbefore mentioned, shall form a committee of His Majesty's said Privy Council, and shall be styled 'The Judicial Committee of the Privy Council': provided nevertheless, that it shall be lawful for His Majesty from time to time, as and when he shall think fit, by his sign manual to appoint any two other persons, being Privy Councillors, to be members of the said committee."

All appeals  
from sentences  
of any judge,

Section 3. "All appeals or complaints in the nature of appeals whatever, which, either by virtue of this Act, or of any law,



statute, or custom, may be brought before His Majesty or His Majesty in Council, from or in respect of the determination, sentence, rule, or order of any court, judge, or judicial officer, and all such appeals as are now pending and unheard, shall, from and after the passing of this Act, be referred by His Majesty to the said Judicial Committee of his Privy Council, and that such appeals, causes, and matters shall be heard by the said Judicial Committee, and a report or recommendation thereon shall be made to His Majesty in Council for his decision thereon as heretofore, in the same manner and form as has been heretofore the custom with respect to matters referred by His Majesty to the whole of his Privy Council, or a committee thereof (the nature of such report or recommendation being always stated in open court).

&c. to be referred by His Majesty to the committee, to report thereon.

Section 4. "It shall be lawful for His Majesty to refer to the said Judicial Committee for hearing or consideration any such other matters whatsoever as His Majesty shall think fit, and such committee shall thereupon hear or consider the same, and shall advise His Majesty thereon in manner aforesaid.

His Majesty may refer any other matters to committee.

Section 5. "No matter shall be heard, nor shall any order, report, or recommendation be made by the said Judicial Committee, in pursuance of this Act, unless in the presence of at least four members of the said committee; and that no report or recommendation shall be made to His Majesty, unless a majority of the members of such Judicial Committee present at the hearing shall concur in such report or recommendation: provided always, that nothing herein contained shall prevent His Majesty, if he shall think fit, from summoning any other of the members of his said Privy Council to attend the meetings of the said committee.

No matter to be heard unless in presence of four members of the committee.

Section 6. "In case His Majesty shall be pleased, by directions under his sign manual, to require the attendance at the said committee, for the purposes of this Act, of any member or members of the said Privy Council who shall be a judge or judges of

In case the King directs the attendance of any judge, a member of the committee, arrangements

to be made by  
the other  
judges of the  
court.

the Court of King's Bench, or of the Court of Common Pleas, or of the Court of Exchequer, such arrangements for dispensing with the attendance of such judge or judges upon his or their ordinary duties during the time of such attendance at the Privy Council as aforesaid shall be made by the judges of the court or courts to which such judge or judges shall belong respectively in regard to the business of the court, and by the judges of the said three courts, or by any eight or more of such judges, including the chiefs of the several courts, in regard to all other duties, as may be necessary and consistent with the public service."

Course of pro-  
cedure under  
3 & 4 Will.  
IV. c. 41.

As to the conduct of appeals, the mode of hearing, &c., the statute contains full provisions. Evidence may be taken *vivâ voce*, or upon written depositions. (*f*) The Judicial Committee may order any particular witnesses to be examined, and as to any particular facts, and may remit causes for rehearing. (*g*) Witnesses may be examined on oath or affirmation, and are liable to punishment for perjury. (*h*) The Judicial Committee may direct an issue to try any fact; may, in certain cases, direct depositions to be read at the trial of the issue; may make such orders as to the admission of evidence as is made by the Court of Chancery; and may direct new trials of issues. (*i*) The powers, &c., of 13 Geo. III. c. 63, and 1 Will. 4, c. 22, with regard to examination of witnesses, apply to the Judicial Committee. (*k*) Costs are in the discretion of the committee. (*l*) Decrees are to be enrolled. (*m*) Committee may refer matters to registrar in same manner as matters are by Court of Chancery referred to a master. (*n*) The attendance of witnesses and production of papers, &c., may be compelled by subpœna. (*o*)

Rehearing.

One of the most important points in connection with the jurisdiction of the Privy Council is their power to grant a *rehearing*.

(*f*) Sect. 7.

(*g*) Sect. 8.

(*h*) Sect. 9.

(*i*) Sects. 10-13.

(*k*) Sect. 14.

(*l*) Sect. 15.

(*m*) Sect. 16.

(*n*) Sect. 17.

(*o*) Sect. 18.

This, as already seen, (p) was not within the competency of the Court of Delegates; but the Privy Council have determined that they possess such a power, although it will be exercised very sparingly. (q)

A leading case is that of *The Singapore*. (r) Here a petition *The Singapore.* having been presented for a rehearing of the appeal before the report of the Judicial Committee had been confirmed by Her Majesty in Council, which stated that evidence had been received at the hearing of the appeal which was not called for or produced in the court below, and which the petitioner alleged contradicted the case made by the pleadings on both sides, it was dismissed, the Judicial Committee being of opinion that the grounds relied on in the petition did not bring the case within any principle on which such an application could be supported. The following extract from the judgment rendered contains a clear and authoritative exposition of the law relating to this particular point:—"We do not affirm that there is no competency in this Court to grant a rehearing in any case. We find from the case of *Rajundernarain Rae v. Bijai Govind Sing*, reported in Moore's P. C. cases, 117, that there may be a rehearing for the purpose of making an alteration in the form of an order. It was done so there, after the committee had actually decided in its report, and that report had been confirmed by the King in Council. In Lord Brougham's judgment in that case a number of instances are collected, two in this court, and others in the House of Lords, showing that there may be a rehearing, either for the purpose above mentioned, or where the intention of the Court appears in the reasons given for their judgment, and

(p) *Ante*, p. 421.

(q) As to this and the circumstances under which they will not allow a case to be reopened see *Hebbert v. Purchas*, L. R. 3 P. C. 664, where they refused such an application, made by counsel on behalf of the respondent, who had not appeared either personally or by counsel at the original hearing of the appeal.

(r) L. R. 1 P. C. 378, 388. See also *Bright v. Hutton*, 3 H. L. Cas. 341.



that intention would be defeated unless an alteration were made. There may be a mistake in the entry of the judgment, or the expressed intention of the Court may be defeated by defect of form in various ways; and where the Court sees clearly that, unless a rehearing were granted its intention declared in the report would be defeated, it is within the competency of the Court to grant it. This, however, is a Supreme Court of Final Appeal, and it is inconsistent with the purposes for which such a tribunal was instituted that in any case, at the option of the parties who are dissatisfied with the conclusion at which the Court has arrived, they should be at liberty to apply for a reconsideration of the judgment upon the point decided thereby. Although it is within the competency of the Court to grant a rehearing according to the authorities cited above, still it must be a very strong case indeed, and coming within the class of cases there collected, which would induce this Court so to interfere."

New points;

fresh evidence;

deciding cause  
in the first  
instance.

The Privy Council, in this respect also differing from the Court of Delegates, are so far a Court of First Instance, that they may allow points to be argued which were not taken in the court below, (s) and may allow further and fresh evidence to be put in on the appeal. (t) They have also jurisdiction to retain a cause which comes before them on a minor and collateral point, and after deciding the question therein involved, to determine the principal matter in dispute, without remitting the cause to the court below. (u)

### SECTION III.—*The present Court of Appeal.*



CCLASTICAL Law and tribunals, in so far as the concern appeals, at present are in a somewhat uncertain and transitional state. The Supreme Court of Judicature Act 1873, (x) did not abolish the functions of the Privy Council

Supreme Court  
of Judicature.

(s) See *ante*, pp. 407-8.

(t) *Ibid.*

(u) *Voysey v. Noble*, L. R. 3 P. C. 365.

(x) 36 & 37 Vict. c. 66.



respect of Ecclesiastical appeals, but it contemplated such abolition, and it contains the following enactment in that behalf, viz. :—

“Section 21. It shall be lawful for Her Majesty, if she shall think fit at any time hereafter, by Order in Council to direct that all appeals and petitions whatsoever to Her Majesty in Council which, according to the laws now in force, ought to be heard by or before the Judicial Committee of Her Majesty’s Privy Council, shall from and after a time to be fixed by such order be referred for hearing to, and be heard by, Her Majesty’s Court of Appeal; and from and after the time fixed by such order, all such appeals and petitions shall be referred for hearing, and be heard by, the said Court of Appeal accordingly, and shall not be heard by the said Judicial Committee; and for all the purposes of and incidental to the hearing of such appeals or petitions, and the reports to be made to Her Majesty thereon, and all orders hereon to be afterwards made by Her Majesty in Council, and also for all purposes of and incidental to the enforcement of any such orders as may be made by the said Court of Appeal or by Her Majesty pursuant to this section (but not for any other purpose) all the power, authority, and jurisdiction now by law vested in the said Judicial Committee shall be transferred to and vested in the said Court of Appeal.

“The Court of Appeal, when hearing any appeals in Ecclesiastical causes, which may be referred to it in manner aforesaid, shall be constituted of such and so many of the judges thereof, and shall be assisted by such assessors, being Archbishops or Bishops of the Church of England, as Her Majesty by any general rules made, with the advice of the judges of the said court, or any five of them (of whom the Lord Chancellor shall be one), and of the archbishops and bishops who are members of Her Majesty’s Privy Council, or any two of them (and which general rules shall be made by Order in Council), may think fit to direct: provided that such rules shall be laid before each House of

Parliament within forty days of the making of the same, if Parliament be then sitting, or if not, then within forty days of the commencement of the then next ensuing session; and if an address is presented to Her Majesty by either House of Parliament, within the next subsequent forty days on which the said House shall have sat, praying that any such Rules may be annulled, Her Majesty may thereupon by Order in Council annul the same; and the Rules so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same."



## PART III.

# STATUTES AND OTHER AUTHORITATIVE ENACTMENTS RELATING TO PUBLIC WORSHIP.

## CHAPTER I.

### THE GENERAL STATUTES OF UNIFORMITY.



HE Statutes contained in this chapter are all those which can fairly be styled the General Statutes relating to the Conduct of Public Worship. They are the important Statutes of 1547, 1552, 1559, and 1661, together with the recent Act of 1872.

STAT. 2 & 3 EDWARDI VI. C. I. A.D. 1548.

*An Act for Uniformity of Service and Administration of the Sacraments throughout the Realm.*

WHERE of long time there hath been had in this realm of England and in Wales divers forms of Common Prayer, commonly called the Service of the Church; that is to say, The Use of Sarum, of York, of Bangor, and of Lincoln; and besides the same now of late much more divers and sundry forms and fashions have been used in the cathedral and parish churches of England and Wales, as well concerning the mattens or morning prayer and the evensong, as also concerning the holy communion, commonly called

Revived by  
1 Eliz. c. 1,  
s. 14.  
The penalty  
for not using  
uniformity of  
service, and  
administration  
of sacraments,  
&c.

Innovators not  
punished, for  
that they did  
it upon good  
zeal.

The Book of  
Common  
Prayer, by the  
aid of the Holy  
Ghost, is set  
forth by the  
bishops and  
learned men of  
the realm.

the Mass, with divers and sundry rites and ceremonies concerning the same, and in the administration of other sacraments of the church; and as the doers and executors of the said rites and ceremonies, in other form than of late years they have been used, were pleased therewith: so other not using the same rites and ceremonies were thereby greatly offended; and albeit the king's majesty, with the advice of his most entirely beloved uncle, the lord protector, and other of his highness' council, hath heretofore divers times assayed to stay innovations or new rites concerning the premises; yet the same hath not had such good success as his highness required in that behalf; whereupon his highness, by the most prudent advice aforesaid, being pleased to bear with the frailty and weakness of his subjects in that behalf, of his great clemency hath not been only content to abstain from punishment of those that have offended in that behalf, for that his highness taketh that they did of a good zeal; but also to the intent a uniform, quiet, and godly order should be had concerning the premises, hath appointed the Archbishop of Canterbury, and certain of the most learned and discreet bishops, and other learned men of this realm, to consider and ponder the premises; and thereupon having as well eye and respect to the most sincere and pure Christian religion taught by the Scripture, as to the usages in the primitive church, should draw and make one convenient and meet order, rite, and fashion of common and open prayer and administration of the sacraments, to be used and used in his majesty's realm of England and in Wales; the which at this time, by the aid of the Holy Ghost, with one uniform agreement, is of them concluded, set forth, and delivered to his highness, to his great comfort and quietness of mind, in a book entitled "The Book of the Common Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the Church, after the use of the Church of England." Wherefore the lords spiritual and temporal, and the commons, in this present parliament assembled, considering as well the most godly travel of the king's highness, of the lord protector, and of other his highness' council, gathering and collecting the said archbishop, bishops, and learned men together, as the godly prayers, orders, rites, and ceremonies in the said book mentioned, and the considerations of altering the things which be altered, and retaining those things which be retained in the said book, but also the honour of God and great quietness which by the grace of God shall ensue upon the one and uniform rite and order in such common prayer and rites and external ceremonies.



monies to be used throughout England and in Wales, at Calice, and the marches of the same, do give to his highness most hearty and lowly thanks for the same. And humbly prayen, that it may be ordained and enacted by his majesty, with the assent of the lords and commons in this present parliament assembled, and by the authority of the same, that all and singular person and persons that have offended concerning the premises, other than such person and persons as now be and remain in ward in the Tower of London, or in the Fleet, may be pardoned thereof; and that all and singular ministers in any cathedral or parish church, or other place within his realm of England, Wales, Calice, and the marches of the same, or other the king's dominions, shall, from and after the feast of Pentecost next coming, be bounden to say and use the mattens, evensong, celebration of the Lord's Supper, commonly called the Mass, and administration of each of the sacraments, and all their common and open prayer, in such order and form as is mentioned in the same book, and none other or otherwise. And albeit that the same be so godly and good, that they give occasion to every honest and conformable man most willingly to embrace them, yet lest any obstinate person who willingly would disturb so godly order and quiet in this realm should not go unpunished, that it may also be ordained and enacted by the authority aforesaid, that if any manner of parson, vicar, or other whatsoever minister, that ought or should sing or say common prayer mentioned in the said book, or minister the sacraments, shall after the said feast of Pentecost next coming refuse to use the said common prayers, or to minister the sacraments in such cathedral or parish church, or other places as he should use or minister the same, in such order and form as they be mentioned and set forth in the said book; or shall use, wilfully and obstinately standing in the same, any other rite, ceremony, order, form, or manner of mass, openly or privily, or mattens, evensong, administration of the sacraments, or other open prayer than is mentioned and set forth in the said book; (open prayer in and throughout this act, is meant that prayer which is for other to come unto or hear, either in common churches or private chapels oratories, commonly called the Service of the Church;) or shall teach, declare, or speak any thing in the derogation or depraving the said book, or any thing therein contained, or of any part thereof; and shall be thereof lawfully convicted according to the laws of this realm, by verdict of twelve men, or by his own confession, or by the notorious evidence of the fact, shall lose and forfeit

The penalty for not using the Book of Common Prayer, and other rites and ceremonies, according to the use of the Church of England.

Using any other manner of prayer.

The penalty for depraving the book or any thing contained therein.

The penalty for  
the first offence.

The penalty for  
the second  
offence.

The penalty  
for the third  
offence.

The penalty by  
plays, songs,  
or tunes, to  
deprave the  
Book of Com-  
mon Prayer, or  
to compel any  
to use other  
prayer.

to the king's highness, his heirs and successors, for his first offence, the profit of such one of his spiritual benefices or promotions as it shall please the king's highness to assign or appoint, coming and arising in one whole year next after his conviction: and also, that the same person so convicted shall for the same offence suffer imprisonment by the space of six months, without bail or mainprise; and if any such person once convict of any such offence concerning the premises, shall after his first conviction eftsoons offend and be thereof in form aforesaid lawfully convict, that then the same person shall for his second offence suffer imprisonment by the space of one whole year, and also shall therefore be deprived, *ipso facto*, of all his spiritual promotions; and that it shall be lawful to all patrons, donors, and grantees of all and singular the same spiritual promotions, to present to the same any other able clerk, in like manner and form as though the party so offending were dead; and that if any such person or persons, after he shall be twice convicted in form aforesaid, shall offend against any of the premises the third time, and shall be thereof in form aforesaid lawfully convicted; that then the person so offending and convicted the third time, shall suffer imprisonment during his life. And if the person that shall offend and be convict in form aforesaid concerning any of the premises, shall not be beneficed nor have any spiritual promotion, that then the same person so offending and convict shall for the first offence suffer imprisonment during six months, without bail or mainprise; and if any such person not having any spiritual promotion, after his first conviction shall eftsoons offend in any thing concerning the premises, and shall in form aforesaid be thereof lawfully convicted, that then the same person shall for his second offence suffer imprisonment during his life.

II. And it is ordained and enacted by the authority abovesaid that if any person or persons whatsoever, after the said feast of Pentecost next coming, shall in any interludes, plays, songs, rhimes or by other open words, declare or speak any thing in the derogation, depraving, or despising of the same book or of any thing therein contained, or any part thereof; or shall by open fact, deed or by open threatenings, compel or cause, or otherwise procure or maintain any parson, vicar, or other minister in any cathedral or parish church, or in any chapel or other place, to sing or say any common and open prayer, or to minister any sacrament otherwise or in any other manner or form than is mentioned in the said book or that by any of the said means shall unlawfully interrupt or be

any parson, vicar, or other ministers in any cathedral or parish church, chapel, or any other place, to sing or say common and open prayer, or to minister the sacraments, or any of them, in any such manner and form as is mentioned in the said book; that then every person being thereof lawfully convicted in form above said, shall forfeit to the king our sovereign lord, his heirs and successors, for the first offence ten pounds. And if any person or persons, being once convicted of any such offence, afterwards offend against any of the premises, and shall in form aforesaid be thereof lawfully convicted, that then the same persons so offending and convicted shall for the second offence forfeit to the king our sovereign lord, his heirs and successors, twenty pounds; and if any person, after he in form aforesaid shall have been twice convicted of any offence concerning any of the premises, shall offend the third time, and be thereof in form aforesaid lawfully convicted, that then every person so offending and convicted shall for his third offence forfeit to our sovereign lord the king all his goods and chattels, and shall suffer imprisonment during his life; and if any person or persons, that for his first offence concerning the premises shall be convicted in form aforesaid, do not pay the sum to be paid by virtue of his conviction, in such manner and form as the same ought to be paid, within six weeks next after his conviction, that then every person so convicted, and so not paying the same, shall for the same first offence instead of the said ten pounds, suffer imprisonment by the space of three months, without bail or mainprise. And if any person or persons, that for his second offence concerning the premises shall be convicted in form aforesaid, do not pay the sum to be paid by virtue of his conviction, in such manner and form as the same ought to be paid within six weeks next after his said second conviction; that then every person so convicted, and not so paying the same, shall for the same second offence, in the stead of the said twenty pounds, suffer imprisonment during six months, without bail or mainprise.

The penalty for the first offence.

The penalty for the second offence.

The penalty for the third offence.

III. And it is ordained and enacted by the authority aforesaid, that all and every justices of Oyer and Determiner, or justices of assize, shall have full power and authority in every of their open and general sessions to inquire, hear, and determine all and all manner of offences that shall be committed or done contrary to any article contained in this present act, within the limits of the commission to them directed, and to make process for the execution of the same, as they may do against any person being indicted before them of trespass, or lawfully convicted thereof.

Justices of oyer, determiner, and assize shall have power to hear and determine those offences.



A bishop may join with the justices.

IV. Provided always, and be it enacted by the authority aforesaid, that all and every archbishop and bishop shall or may at all time and times, at his liberty and pleasure, join and associate himself by virtue of this act to the said justices of Oyer and Determiner, or to the said justices of assize, at every of the said open and general sessions to be holden in any place within his diocese, for and to the inquiry, hearing, and determining of the offences aforesaid.

Who may use prayers in another language.

V. Provided always, that it shall be lawful to any man that understandeth the Greek, Latin, and Hebrew tongue, or other strange tongue, to say and have the said prayers heretofore specified of mattens and evensong in Latin, or any such other tongue, saying the same privately, as they do understand.

VI. And for the further encouraging of learning in the tongues in the universities of Cambridge and Oxford, to use and exercise in their common and open prayer in their chapels (being no parish churches) or other places of prayer, the mattens, evensong, litany, and all other prayers, (the holy communion, commonly called the Mass, excepted,) prescribed in the said book, in Greek, Latin, or Hebrew; any thing in this present act to the contrary notwithstanding.

VII. Provided also, that it shall be lawful for all men, as well in churches, chapels, oratories, or other places, to use openly any psalms or prayer taken out of the Bible, at any due time, not letting or omitting thereby the service or any part thereof mentioned in the said book.

When the service books shall be gotten.

VIII. Provided also, and be it enacted by the authority aforesaid, that the books concerning the said services shall at the costs and charges of the parishioners of every parish and cathedral church be attained and gotten before the feast of Pentecost next following, or before; and that all such parishes and cathedral churches, or other places where the said books shall be attained and gotten before the said feast of Pentecost, shall, within three weeks next after the said books so attained and gotten, use the said service, and put the same in ure according to this act.

IX. And be it further enacted by the authority aforesaid, that no person or persons shall be at any time hereafter impeached or otherwise molested of or for any of the offences above mentioned hereafter to be committed or done contrary to this act, unless he or they so offending be thereof indicted at the next general sessions, to be holden before any such of the justices of Oyer and Determiner



or justices of assize, next after any offence committed or done contrary to the tenor of this act.

X. Provided always, and be it ordained and enacted by the authority aforesaid, that all and singular lords of the parliament, for the said offences above mentioned, shall be tried by their peers.

XI. Provided also, and be it ordained and enacted by the authority aforesaid, that the mayor of London, and all other mayors, bailiffs, and other head officers of all and singular cities, boroughs, and towns corporate within this realm, Wales, Calice, and the marches of the same, to the which justices of assize do not commonly repair, shall have full power and authority, by virtue of this act, to inquire, hear, and determine the offences abovesaid, and every of them yearly, within fifteen days after the feast of Easter and St. Michael the Archangel, in like manner and form as justices of assize and Oyer and Determiner may do.

Chief officers of cities and corporate towns may hear and determine these offences.

XII. Provided always, and be it ordained and enacted by the authority aforesaid, that all and singular archbishops and bishops, and every of their chancellors, commissaries, archdeacons, and other ordinaries, having any peculiar ecclesiastical jurisdiction, shall have full power and authority, by virtue of this act, as well to inquire in their visitations, synods, and elsewhere within their jurisdiction, at any other time and place, to take accusations and informations of all and every the things above mentioned, done, committed, or perpetrate within the limits of their jurisdiction and authority, and to punish the same by admonition, excommunication, sequestration, or deprivation, and other censures and process, in like form as heretofore hath been used in like cases by the king's ecclesiastical laws.

The offences to be investigated and punished by the ecclesiastical jurisdiction.

XIII. Provided always, and be it enacted, that whatsoever person offending in the premises, shall for the first offence receive punishment of the ordinary, having a testimonial thereof under the said ordinary's seal, shall not for the same offence eftsoons be convented before the justices; and likewise receiving for the said first offence punishment by the justices, he shall not for the same offence eftsoons receive punishment of the ordinary; any thing contained in this act to the contrary notwithstanding.

But once punished for one offence.

STAT. 5 &amp; 6 EDWARDI VI. C. I. A.D. 1552.

*An Act for the Uniformity of Service and Administration of the Sacrament throughout the Realm.*

Uniformity of  
prayer and  
administration  
of sacraments  
shall be used  
in the church.

**W**HERE there hath been a very godly order set forth by the authority of parliament, for common prayer and administration of the sacraments, to be used in the mother tongue within the church of England, agreeable to the word of God and the primitive church, very comfortable to all good people desiring to live in Christian conversation, and most profitable to the estate of this realm, upon the which the mercy, favour, and blessing of Almighty God is in no wise so readily and plenteously poured as by common prayers, due using of the sacraments, and often preaching of the gospel, with the devotion of the hearers: and yet this notwithstanding, a great number of people in divers parts of this realm, following their own sensuality, and living either without knowledge or due fear of God, do wilfully and damnably before Almighty God abstain and refuse to come to their parish churches and other places where common prayer, administration of the sacraments, and preaching of the word of God, is used upon Sundays and other days ordained to be holy-days.

March, 95.

Every person  
shall resort to  
his parish  
church or  
chapel upon  
Sundays and  
holidays.

II. For reformation hereof, be it enacted by the king our sovereign lord, with the assent of the lords and commons in this present parliament assembled, and by the authority of the same, that from and after the feast of All Saints next coming, all and every person and persons inhabiting within this realm, or any other the king's majesty's dominions, shall diligently and faithfully (having no lawful or reasonable excuse to be absent) endeavour themselves to resort to their parish church or chapel accustomed; or upon reasonable let thereof, to some usual place where common prayer and such service of God shall be used in such time of lett, upon every Sunday and other days ordained and used to be kept as holy-days; and then and there to abide orderly and soberly during the time of the common prayer, preachings, or other service of God there to be used and ministered; upon pain of punishment by the censures of the church.

III. And for the due execution hereof, the king's most excellent majesty, the lords temporal, and all the commons, in this present

parliament assembled, doth in God's name earnestly require and charge all the archbishops, bishops, and other ordinaries, that they shall endeavour themselves, to the uttermost of their knowledges, that the due and true execution thereof may be had throughout their dioceses and charges, as they will answer before God for such evils and plagues wherewith Almighty God may justly punish his people for neglecting this good and wholesome law.

IV. And for their authority in this behalf, be it further likewise enacted by the authority aforesaid, that all and singular the same archbishops, bishops, and all other their officers exercising ecclesiastical jurisdiction, as well in place exempt as not exempt, within their dioceses, shall have full power and authority by this act to reform, correct, and punish by censures of the church, all and singular persons which shall offend within any their jurisdictions or dioceses, after the said feast of All Saints next coming, against this act and statute; any other law, statute, privilege, liberty, or provision heretofore made, had, or suffered to the contrary notwithstanding.

They which come not to church may be punished by the censures of the church.

V. And because there hath arisen in the use and exercise of the aforesaid common service in the church heretofore set forth, divers doubts for the fashion and manner of the ministration of the same, rather by the curiosity of the minister and mistakers, than of any other worthy cause; therefore, as well for the more plain and manifest explanation hereof, as for the more perfection of the said order of common service, in some places where it is necessary to make the same prayers and fashion of service more earnest and fit to stir Christian people to the true honouring of Almighty God; the king's most excellent majesty, with the assent of the lords and commons, in this present parliament assembled, and by the authority of the same, hath caused the aforesaid order of common service, entitled "The Book of Common Prayer," to be faithfully and godly perused, explained, and made fully perfect, and by the aforesaid authority hath annexed and joined it, so explained and perfected, to this present statute: adding also a form and manner of making and consecrating of archbishops, bishops, priests, and deacons, to be of like force, authority, and value as the same like foresaid book, entitled "The Book of Common Prayer," was before, and to be accepted, received, used, and esteemed in like sort and manner, and with the same clauses of provisions and exceptions, to all intents, constructions, and purposes, as by the act of parliament made in the second year of the king's majesty's reign was ordained, limited, expressed, and appointed for the uniformity of

The Book of Common Prayer, with the form of consecrating bishops, priests, and deacons.  
1 Edw. VI. c. 2.

2 & 3 Edw. VI.  
c. 1.



service and administration of the sacraments throughout the realm, upon such several pains as in the said act of parliament is expressed. And the said former act to stand in full force and strength, to all intents and constructions, and to be applied, practised, and put in use, to and for the establishing of "The Book of Common Prayer," now explained and hereunto annexed, and also the said form of making of archbishops, bishops, priests, and deacons hereunto annexed, as it was for the former book.

The penalties for being present at any other common prayer or sacraments.

Altered as to the penalty by 1 Eliz. c. 2, ss. 7, 8.

VI. And by the authority aforesaid it is now further enacted that if any manner of person or persons inhabiting and being within this realm, or any other the king's majesty's dominions shall after the said feast of All Saints willingly and wittingly hear and be present at any other manner or form of common prayer or administration of the sacraments, of making of ministers in the churches, or of any other rites contained in the book annexed to this act, than is mentioned and set forth in the said book, or that is contrary to the form of sundry provisions and exceptions contained in the aforesaid former statute, and shall be thereof convicted according to the laws of this realm, before the justices of assize, justices of Oyer and Determiner, justices of peace in the sessions, or any of them, by the verdict of twelve men, or by himself or their own confession or otherwise, shall for the first offence suffer imprisonment for six months, without bail or mainprise; and for the second offence, being likewise convicted as is above said, imprisonment for one whole year; and for the third offence in like manner, imprisonment during his or their lives. And for the more knowledge to be given thereof, and better observation of the law, be it enacted by the authority aforesaid, that all and singular curates shall, upon one Sunday every quarter of the year, during one whole year next following the foresaid feast of All Saints next coming, read this present act in the church at the time of the morning assembly, and likewise once in every year following; at the same time declaring unto the people, by the authority of the Scriptures, how the mercy and goodness of God hath in all ages been showed to his people in their necessities and extremities, by means of hearty and faithful prayers made to Almighty God, especially where people be gathered together with one faith and mind to offer up their hearts by prayer, as the best sacrifices that Christian men can yield.



## STAT. I ELIZABETHÆ, C. 2. A.D. 1558.

*An Act for the Uniformity of Common Prayer and Service in the Church, and Administration of the Sacraments.*



HERE at the death of our late sovereign lord King Edward the Sixth there remained one uniform order of common service and prayer, and of the administration of sacraments, rites, and ceremonies of the church of England, which was set forth in one book, intituled, "The Book of Common Prayer, and Administration of Sacraments, and other Rites and Ceremonies in the Church of England;" authorized by act of parliament holden in the fifth and sixth years of our said late sovereign lord King Edward the Sixth, intituled, "An Act for the Uniformity of Common Prayer, and Administration of the Sacraments;" the which was repealed and taken away by act of parliament in the first year of the reign of our late sovereign lady Queen Mary, to the great decay of the due honour of God, and discomfort to the professors of the truth of Christ's religion.

13 & 14 Car.  
II. c. 4.

5 & 6 Edw. VI.  
c. 1.

A repeal of  
the statute of  
1 Mar. sess. 2,  
c. 2.

II. Be it therefore enacted by the authority of this present parliament, that the said statute of repeal, and every thing therein contained, only concerning the said book, and the service, administration of the sacraments, rites, and ceremonies, contained or appointed in or by the said book, shall be void and of none effect, from and after the feast of the Nativity of St. John Baptist next coming; and that the said book, with the order of service, and of the administration of sacraments, rites, and ceremonies, with the alterations and additions therein added and appointed by this statute, shall stand and be, from and after the said feast of the Nativity of St. John Baptist, in full force and effect, according to the tenor and effect of this statute; any thing in the aforesaid statute of repeal to the contrary notwithstanding.

And the Book  
of Common  
Prayer shall be  
of effect.

1 Leon. 295.

III. And further be it enacted by the queen's highness, with the assent of the lords and commons in this present parliament assembled, and by the authority of the same, that all and singular ministers in any cathedral or parish church, or other place within this realm of England, Wales, and the marches of the same, or other the queen's dominions, shall from and after the feast of the Nativity of St. John Baptist next coming, be bounden to say and use the mattens, even-

The Book of  
Common  
Prayer shall be  
used.  
8 Eliz. c. 1.

The alterations  
of the book set  
forth.  
5 & 6 Edw. VI.  
c. 1.

The forfeiture  
of those which  
use any other  
service than  
the Book of  
Common  
Prayer.  
Godb. 118,  
pl. 137.  
3 Mod. 78.

The penalty  
for depraving  
the Book of  
Common  
Prayer.

The penalty  
for the second  
offence.

song, celebration of the Lord's supper, and administration of each of the sacraments, and all the common and open prayer, in such order and form as is mentioned in the said book, so authorized by parliament in the said fifth and sixth years of the reign of King Edward the Sixth, with one alteration or addition of certain lessons to be used on every Sunday in the year, and the form of the Litany altered and corrected, and two sentences only added in the delivery of the sacrament to the communicants, and none other or otherwise.

IV. And that if any manner of parson, vicar, or other whatsoever minister, that ought or should sing or say common prayer mentioned in the said book, or minister the sacraments, from and after the feast of the Nativity of St. John Baptist next coming, refuse to use the said common prayers, or to minister the sacraments in such cathedral or parish church, or other places as he should use to minister the same, in such order and form as they be mentioned and set forth in the said book; or shall, wilfully or obstinately standing in the same, use any other rite, ceremony, order, form, or manner of celebrating of the Lord's supper, openly or privily, or mattens, even-song, administration of the sacraments, or other open prayers, than is mentioned and set forth in the said book; (open prayer in and throughout this act, is meant that prayer which is for others to come unto, or hear, either in common churches, or private chapels or oratories, commonly called the service of the church;) or shall preach, declare, or speak any thing in the derogation or depraving of the said book, or any thing therein contained, or of any part thereof, and shall be thereof lawfully convicted, according to the laws of this realm, by verdict of twelve men, or by his own confession, or by the notorious evidence of the fact, shall lose and forfeit to the queen's highness, her heirs and successors, for his first offence, the profit of all his spiritual benefices or promotions coming or arising in one whole year next after his conviction; and also that the person so convicted shall for the same offence suffer imprisonment for the space of six months, without bail or mainprize.

V. And if any such person once convict of any offence concerning the premises, shall after his first conviction afterwards offend, and be thereof in form aforesaid lawfully convicted, that then the same person shall for his second offence suffer imprisonment by the space of one whole year, and also shall therefore be deprived, *ipso facto*, of all his spiritual promotions; and that it shall be lawful to all patrons or donors of all and singular the same spiritual promotions, or of any

of them, to present or collate to the same, as though the person or persons so offending were dead.

VI. And that if any such person or persons, after he shall be twice convicted in form aforesaid, shall offend against any of the premises the third time, and shall be thereof in form aforesaid lawfully convicted, that then the person so offending and convicted the third time, shall be deprived, *ipso facto*, of all his spiritual promotions, and also shall suffer imprisonment during his life.

The penalty for the third offence.

VII. And if the person that shall offend, and be convicted in form aforesaid, concerning any of the premises, shall not be beneficed, nor have any spiritual promotion, that then the same person so offending and convict, shall for the first offence suffer imprisonment during one whole year next after his said conviction, without bail or mainprise.

The penalty of an offender having no spiritual promotion.

VIII. And if any such person, not having any spiritual promotion, after his first conviction shall afterwards offend in any thing concerning the premises, and shall in form aforesaid be thereof lawfully convicted, that then the same person shall for his second offence suffer imprisonment during his life.

IX. And it is ordained and enacted by the authority aforesaid, that if any person or persons whatsoever, after the said feast of the Nativity of St. John Baptist next coming, shall in any interludes, plays, songs, rhymes, or by other open words, declare or speak any thing in the derogation, depraving, or despising of the same book, or of any thing therein contained, or any part thereof: or shall by open fact, deed, or by open threatenings, compel, or cause, or otherwise procure or maintain, any parson, vicar, or other minister in any cathedral or parish church, or in chapel, or in any other place, to sing or say any common or open prayer, or to minister any sacrament otherwise, or in any other manner and form, than is mentioned in the said book; or by any of the said means shall unlawfully interrupt or let any parson, vicar, or other minister in any cathedral or parish church, chapel, or any other place, to sing or say common and open prayer, or to minister the sacraments of any of them, in such manner and form as is mentioned in the said book; that then every such person, being thereof lawfully convicted in form abovesaid, shall forfeit to the queen our sovereign lady, her heirs and successors, for the first offence an hundred marks.

The forfeiture of them which do any thing, or speak in the derogation of the Book of Common Prayer. Causing other prayer to be said or sung. Co. pl. fol. 362. 1 Roll. 95. 1 Mod. 168.

X. And if any person or persons being once convict of any such offence, afterwards offend against any of the last recited offences, and

The forfeiture of an hundred marks for the first offence.

The forfeiture of four hundred marks for the second offence.



shall in form aforesaid be thereof lawfully convict; that then the same person so offending and convict shall for the second offence forfeit to the queen our sovereign lady, her heirs and successors, four hundred marks.

The forfeiture for the third offence.

XI. And if any person, after he in form aforesaid shall have been twice convict of any offence concerning any of the last recited offences, shall offend the third time, and be thereof in form above-said lawfully convict, that then every person so offending and convict shall for his third offence forfeit to our sovereign lady the queen, all his goods and chattels, and shall suffer imprisonment during his life.

The penalty if the party convicted do not pay his forfeiture within the time limited.

XII. And if any person or persons, that for his first offence concerning the premises shall be convict in form aforesaid, do not pay the sum to be paid by virtue of his conviction, in such manner and form as the same ought to be paid, within six weeks next after his conviction; that then every person so convict, and so not paying the same, shall for the same first offence, instead of the said sum, suffer imprisonment by the space of six months, without bail or mainprise.

XIII. And if any person or persons, that for his second offence concerning the premises shall be convict in form aforesaid, do not pay the said sum to be paid by virtue of his conviction and this statute, in such manner and form as the same ought to be paid, within six weeks next after his said second conviction; that then every person so convicted, and not so paying the same, shall for the same second offence, in the stead of the said sum, suffer imprisonment during twelve months, without bail or mainprise.

Every person shall resort to the church upon the holy-days.  
Godb. 148, pl. 191.  
One justice may convict the offender, &c. by 3 Jac. I. c. 4, s. 27.  
2 Roll. 438, 455.  
March, 93.  
The forfeiture for not coming to church.  
23 Eliz. c. 1.  
11 Co. 56.  
1 Roll. 89.

XIV. And that from and after the said feast of the Nativity of St. John Baptist next coming, all and every person and persons inhabiting within this realm, or any other the queen's majesty's dominions, shall diligently and faithfully, having no lawful or reasonable excuse to be absent, endeavour themselves to resort to their parish church or chapel accustomed, or upon reasonable let thereof, to some usual place where common prayer and such service of God shall be used in such time of let, upon every Sunday, and other days ordained and used to be kept as holy-days, and then and there to abide orderly and soberly during the time of the common prayer, preaching, or other service of God there to be used and ministered; upon pain of punishment by the censures of the church, and also upon pain that every person so offending shall forfeit for every such offence twelvpence, to be levied by the churchwardens of the parish where such



offence shall be done, to the use of the poor of the same parish, of the goods, lands, and tenements of such offender, by way of distress.

XV. And for due execution hereof, the queen's most excellent majesty, the lords temporal, and all the commons, in this present parliament assembled, do in God's name earnestly require and charge all the archbishops, bishops, and other ordinaries, that they shall endeavour themselves to the uttermost of their knowledges, that the due and true execution hereof may be had throughout their diocese and charges, as they will answer before God, for such evils and plagues wherewith Almighty God may justly punish his people for neglecting this good and wholesome law.

XVI. And for their authority in this behalf, be it further enacted by the authority aforesaid, that all and singular the said archbishops, bishops, and all other their officers exercising ecclesiastical jurisdiction, as well in place exempt as not exempt, within their diocese, shall have full power and authority by this act to reform, correct, and punish, by censures of the church, all and singular persons which shall offend within any their jurisdictions or diocese, after the said feast of the Nativity of St. John Baptist next coming, against his act and statute; any other law, statute, privilege, liberty, or provision heretofore made, had, or suffered, to the contrary notwithstanding.

The ordinary may punish offenders by the censures of the church.

XVII. And it is ordained and enacted by the authority aforesaid, that all and every justices of Oyer and Determiner, or justice of assize, shall have full power and authority in every of their open and general sessions, to inquire, hear, and determine all and all manner of offences that shall be committed or done contrary to any article contained in this present act, within the limits of the commission to them directed, and to make process for the execution of the same, as they may do against any person being indicted before them of trespass, or lawfully convicted thereof.

Which justices may punish these offences.

XVIII. Provided always, and be it enacted by the authority aforesaid, that all and every archbishop and bishop shall or may at all time and times, at his liberty and pleasure, join and associate himself, by virtue of this act, to the said justices of Oyer and Determiner, or to the said justices of assize, at every of the said open and general sessions to be holden in any place within his diocese, for and to the inquiry, hearing, and determining of the offences aforesaid.

A bishop may join with the justices to inquire of offenders.

XIX. Provided also, and be it enacted by the authority afore-

At whose charges the

Book of Com-  
mon Prayer  
shall be gotten.

said, that the books concerning the said services shall, at the costs and charges of the parishioners of every parish and cathedral church, be attained and gotten before the said feast of the Nativity of St. John Baptist next following; and that all such parishes and cathedral churches, or other places, where the said books shall be attained and gotten before the said feast of the Nativity of St. John Baptist, shall within three weeks next after the said books so attained and gotten use the said service, and put the same in ure according to this act.

Within what  
time offenders  
shall be im-  
peached.  
Godb. 148,  
pl. 191.

XX. And be it further enacted by the authority aforesaid, that no person or persons shall be at any time hereafter impeached or otherwise molested of or for any of the offences above-mentioned, hereafter to be committed or done contrary to this act, unless he or they so offending be thereof indicted at the next general sessions to be holden before any such justices of Oyer and Determiner or justices of assize, next after any offence committed or done contrary to the tenor of this act.

Trial of peers.

XXI. Provided always, and be it ordained and enacted by the authority aforesaid, that all and singular lords of the parliament, for the third offence above-mentioned, shall be tried by their peers.

Chief officers  
of cities and  
boroughs shall  
inquire of  
offenders.

XXII. Provided also, and be it ordained and enacted by the authority aforesaid, that the mayor of London, and all other mayors, bailiffs, and other head officers of all and singular cities, boroughs, and towns corporate within this realm, Wales, and the marches of the same, to the which justices of assize do not commonly repair, shall have full power and authority by virtue of this act, to inquire, hear, and determine the offences abovesaid, and every of them, yearly within fifteen days after the feast of Easter, and St. Michael the Archangel, in like manner and form as justices of assize and Oyer and Determiner may do.

The ordinary's  
jurisdiction in  
these cases.

XXIII. Provided always, and be it ordained and enacted by the authority aforesaid, that all and singular archbishops and bishops, and every of their chancellors, commissaries, archdeacons, and other ordinaries, having any peculiar ecclesiastical jurisdiction, shall have full power and authority by virtue of this act, as well to inquire in their visitation, synods, and elsewhere within their jurisdiction at any other time and place, to take accusations and informations of all and every the things above-mentioned, done, committed, or perpetrated within the limits of their jurisdictions and authority, and to punish the same by admonition, excommunication, sequestration, or deprivation, and other censures and process, in like form as

heretofore hath been used in like cases by the queen's ecclesiastical laws.

XXIV. Provided always, and be it enacted, that whatsoever persons offending in the premises shall for their offences first receive punishment of the ordinary, having a testimonial thereof under the said ordinary's seal, shall not for the same offence afterwards be convicted before the justices: and likewise receiving for the said offence punishment first by the justices, shall not for the same offence afterwards receive punishment of the ordinary; any thing contained in this act to the contrary notwithstanding.

None shall be punished above once for one offence.

XXV. Provided always, and be it enacted, that such ornaments of the church and of the ministers thereof, shall be retained and be in use, as was in this church of England by authority of parliament, in the second year of the reign of King Edward the Sixth, until other order shall be therein taken by the authority of the queen's majesty, with the advice of her commissioners appointed and authorized under the great seal of England for causes ecclesiastical, or of the metropolitan of this realm.

Ornaments of the church and ministers.

XXVI. And also, that if there shall happen any contempt or irreverence to be used in the ceremonies or rites of the church, by the mis-using of the orders appointed in this book, the queen's majesty may, by the like advice of the said commissioners or metropolitan, ordain and publish such further ceremonies or rites, as may be most for the advancement of God's glory, the edifying of his church, and the due reverence of Christ's holy mysteries and sacraments.

XXVII. And be it further enacted by the authority aforesaid, that all laws, statutes, and ordinances, wherein or whereby any other service, administration of sacraments or common prayer, is limited, established, or set forth to be used within this realm, or any other the queen's dominions or countries, shall from henceforth be utterly void and of none effect. Made perpetual by 5 Annæ, c. 5, as to the establishment of the church.

All laws and ordinances made for other service shall be void.

Further provisions, see 13 Eliz. c. 12; 23 Eliz. c. 1; 15 Car. II. c. 6; 1 G. & M. St. I. c. 18; 23 Geo. II. c. 28.



STAT. 13 &amp; 14 CAROLI II. c. 4. A.D. 1662.

*An Act for the Uniformity of public Prayers, and Administration of Sacraments, and other Rites and Ceremonies; and for establishing the Form of making, ordaining, and consecrating Bishops, Priests, and Deacons, in the Church of England.*

This act enforced by 5  
Ann. c. 5, s. 1.



HEREAS in the first year of the late Queen Elizabeth, there was one uniform order of common service and prayer, and of the administration of sacraments, rites, and ceremonies, in the church of England, (agreeable to the word of God, and usage of the primitive church,) compiled by the reverend bishops and clergy, set forth in one book, intituled, "The Book of Common Prayer, and Administration of Sacraments, and other Rites and Ceremonies in the Church of England," and enjoined to be used by act of parliament, holden in the said first year of the said late queen, intituled, "An Act for the Uniformity of Common Prayer and Service in the Church, and Administration of the Sacraments," very comfortable to all good people desirous to live in Christian conversation, and most profitable to the estate of this realm; upon the which the mercy, favour, and blessing of Almighty God is in no wise so readily and plentifully poured, as by common prayers, due using of the sacraments, and often preaching of the gospel, with devotion of the hearers; and yet this notwithstanding, a great number of people in divers parts of this realm, following their own sensuality, and living without knowledge and due fear of God, do wilfully and schismatically abstain and refuse to come to their parish churches, and other public places where common prayer, administration of the sacraments, and preaching of the word of God is used upon the Sundays and other days ordained and appointed to be kept and observed as holy-days: and whereas by the great and scandalous neglect of ministers in using the said order or liturgy so set forth and enjoined as aforesaid, great mischiefs and inconveniences, during the times of the late unhappy troubles, have arisen and grown, and many people have been led into factions and schisms, to the great decay and scandal of the reformed religion of the church of England, and to the hazard of many souls: for prevention whereof in time to come, for settling the peace of the church, and for allaying the present distempers which the indisposition of the time hath contracted, the king's majesty, according to his declaration of the five

1 Eliz. c. 2.

The king's declaration and commission for reviewing the



and twentieth of October, one thousand six hundred and sixty, granted his commission under the great seal of England to several bishops and other divines, to review the Book of Common Prayer, and to prepare such alterations and additions as they thought fit to offer: and afterwards the convocations of both the provinces of Canterbury and York, being by his majesty called and assembled, and now sitting, his majesty hath been pleased to authorize and require the presidents of the said convocations, and other the bishops and clergy of the same, to review the said Book of Common Prayer, and the Book of the Form and Manner of the making and consecrating of Bishops, Priests, and Deacons: and that after mature consideration they should make such additions and alterations in the said books respectively, as to them should seem meet and convenient; and should exhibit and present the same to his majesty in writing for his further allowance or confirmation: since which time, upon full and mature deliberation, they the said presidents, bishops, and clergy, of both provinces, have accordingly reviewed the said books, and have made some alterations which they think to be inserted to the same; and some additional prayers to the said Book of Common Prayer, to be used upon proper and emergent occasions; and have exhibited and presented the same unto his majesty in writing, in one book, intituled, "The Book of Common Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the use of the Church of England; together with the Psalter or Psalms of David, pointed as they are to be sung or said in Churches; and the Form and Manner of making, ordaining, and consecrating, of Bishops, Priests, and Deacons:" all which his majesty having duly considered, hath fully approved and allowed the same, and recommended to this present parliament, that the said Books of Common Prayer, and of the Form of Ordination and Consecration of Bishops, Priests, and Deacons, with the alterations and additions which have been so made and presented to his majesty by the said convocations, be the book which shall be appointed to be used by all that officiate in all cathedral and collegiate churches and chapels, and in all chapels of colleges and halls in both the universities, and the colleges of Eton and Winchester, and in all parish churches and chapels within the kingdom of England, dominion of Wales, and town of Berwick upon Tweed, and by all that make or consecrate bishops, priests, or deacons, in any of the said places, under such sanctions and penalties as the houses of parliament shall think fit.

Book of Common Prayer, and alterations to be propounded therein.

The peace and honour of religion much advanced by uniform agreement in the public worship of God.

The Book of Common Prayer shall be used.

All parsons, vicars, and ministers to read and declare their assent to use the same.

II. Now in regard that nothing conduced more to the settling of the peace of this nation (which is desired of all good men), nor to the honour of our religion, and the propagation thereof, than an universal agreement in the public worship of Almighty God; and to the intent that every person within this realm may certainly know the rule to which he is to conform in public worship, and administration of sacraments, and other rites and ceremonies of the Church of England, and the manner how and by whom bishops, priests, and deacons, are and ought to be made, ordained, and consecrated; be it enacted by the king's most excellent majesty, by the advice and with the consent of the lords spiritual and temporal, and of the commons, in this present parliament assembled, and by the authority of the same, that all and singular ministers in any cathedral, collegiate or parish church or chapel, or other place of public worship within this realm of England, dominion of Wales, and town of Berwick upon Tweed, shall be bound to say and use the morning prayer, evening prayer, celebration and administration of both the sacraments, and all other the public and common prayer, in such order and form as is mentioned in the said book annexed and joined to this present act, and intituled, "The Book of Common Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the use of the Church of England; together with the Psalter or Psalms of David, pointed as they are to be sung or said in Churches; and the Form or Manner of making, ordaining, and consecrating of Bishops, Priests, and Deacons:" and that the morning and evening prayers therein contained shall, upon every Lord's day, and upon all other days and occasions, and at the times therein appointed, be openly and solemnly read by all and every minister or curate, in every church, chapel, or other place of public worship, within this realm of England and places aforesaid.

III. And to the end that uniformity in the public worship of God (which is so much desired) may be speedily effected, be it further enacted by the authority aforesaid, that every parson, vicar, or other minister whatsoever, who now hath and enjoyeth any ecclesiastical benefice or promotion within this realm of England or places aforesaid, shall, in the church, chapel, or place of public worship, belonging to his said benefice or promotion, upon some Lord's day before the feast of St. Bartholomew which shall be in the year of our Lord God one thousand six hundred sixty and two, openly, publicly, and solemnly read the morning and evening prayer appointed to be read

by and according to the said Book of Common Prayer, at the times thereby appointed; and after such reading thereof, shall openly and publicly, before the congregation there assembled, declare his unfeigned assent and consent to the use of all things in the said book contained and prescribed, in these words, and no other :

IV. "I, A. B., do here declare my unfeigned assent and consent to all and every thing contained and prescribed in and by the book, intituled, 'The Book of Common Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the use of the Church of England;' together with the Psalter or Psalms of David, pointed as they are to be sung or said in Churches; and the Form or Manner of making, ordaining, and consecrating of Bishops, Priests, and Deacons."

V. And that all and every such person, who shall (without some lawful impediment to be allowed and approved of by the ordinary of the place) neglect or refuse to do the same within the time aforesaid, (or in case of such impediment, within one month after such impediment removed,) shall *ipso facto* be deprived of all his spiritual promotions: and that from thenceforth it shall be lawful to and for all patrons and donors of all and singular the said spiritual promotions, or of any of them, according to their respective rights and titles, to present or collate to the same, as though the person or persons so offending or neglecting were dead.

VI. And be it further enacted by the authority aforesaid, that every person who shall hereafter be presented or collated, or put into any ecclesiastical benefice or promotion within this realm of England and places aforesaid, shall, in the church, chapel, or place of public worship belonging to his said benefice or promotion, within two months next after that he shall be in the actual possession of the said ecclesiastical benefice or promotion, upon some Lord's day, openly, publicly, and solemnly read the morning and evening prayers appointed to be read by and according to the said Book of Common Prayer, at the times thereby appointed; and after such reading thereof shall openly and publicly, before the congregation there assembled, declare his unfeigned assent and consent to the use of all things therein contained and prescribed, according to the form before appointed: and that all and every such person who shall (without some lawful impediment to be allowed and approved by the ordinary of the place) neglect or refuse to do the same within the time aforesaid, (or in case of such impediment, within one month after such impediment removed,) shall, *ipso facto*, be de-

The penalty  
for refusing.  
23 Geo. II.  
c. 23.

Every parson  
shall read the  
Common  
Prayer, and  
declare his  
assent thereto.

The penalty  
for not so  
doing.  
2 Show. 53.



prived of all his said ecclesiastical benefices and promotions: and that from thenceforth it shall and may be lawful to and for all patrons and donors of all and singular the said ecclesiastical benefices and promotions, or any of them, according to their respective rights and titles, to present or collate to the same, as though the person or persons so offending or neglecting were dead.

Incumbents of livings, keeping curates, shall read the same once every month.

Penalty and manner of conviction for not doing it.

VII. And be it further enacted by the authority aforesaid, that in all places where the proper incumbent of any parsonage or vicarage, or benefice with cure, doth reside on his living and keep a curate, the incumbent himself in person (not having some lawful impediment to be allowed by the ordinary of the place) shall once (at the least) in every month openly and publicly read the common prayers and service in and by the said book prescribed, and (if there be occasion) administer each of the sacraments and other rites of the church, in the parish church or chapel, of or belonging to the same parsonage, vicarage, or benefice, in such order, manner, and form, as in and by the said book is appointed; upon pain to forfeit the sum of five pounds to the use of the poor of the parish for every offence, upon conviction by confession, or proof of two credible witnesses, upon oath, before two justices of the peace of the county, city, or town corporate, where the offence shall be committed, (which oath the said justices are hereby empowered to administer,) and in default of payment within ten days, to be levied by distress and sale of the goods and chattels of the offender, by the warrant of the said justices, by the churchwardens, or overseers of the poor of the said parish, rendering the surplusage to the party.

Deans, &c. shall subscribe the declaration. 15 Car. II. c. 6. See 12 Ann. St. II. c. 7; and 2 Geo. II. c. 31, s. 8.

VIII. And be it further enacted by the authority aforesaid, that every dean, canon, and prebendary of every cathedral or collegiate church, and all masters and other heads, fellows, chaplains, and tutors of or in any college, hall, house of learning, or hospital, and every public professor and reader in either of the universities, and in every college elsewhere, and every parson, vicar, curate, lecturer, and every other person in holy orders, and every schoolmaster keeping any public or private school, and every person instructing or teaching any youth in any house or private family as a tutor or schoolmaster, who upon the first day of May, which shall be in the year of our Lord God one thousand six hundred sixty-two, or at any time thereafter, shall be incumbent or have possession of any deanery, canonry, prebend, mastership, headship, fellowship, professor's place or reader's place, parsonage, vicarage, or any other ecclesiastical dignity or promotion, or of any curate's place, lecture,



or school, or shall instruct or teach any youth as tutor or schoolmaster, shall, before the feast day of St. Bartholomew, which shall be in the year of our Lord one thousand six hundred sixty-two, or at or before his or their respective admission to be incumbent or have possession aforesaid, subscribe the declaration or acknowledgment following, *scilicet* :

IX. "I, *A. B.*, do declare, that it is not lawful, upon any pretence whatsoever, to take arms against the king; and that I do abhor that traitorous position of taking arms by his authority against his person, or against those that are commissioned by him; and that I will conform to the liturgy of the church of England, as is now by law established: and I do declare that I do hold, there lies no obligation upon me or on any other person, from the oath commonly called, The solemn League and Covenant, to endeavour any change or alteration of government either in church or state; and that the same was in itself an unlawful oath, and imposed upon the subjects of this realm against the known laws and liberties of this kingdom."

The declaration.  
In part abolished by 1 G. & M. Sess. 1, c. 8, s. 11.

X. Which said declaration and acknowledgment shall be subscribed by every of the said masters and other heads, fellows, chaplains, and tutors, of or in any college, hall, or house of learning, and by every public professor and reader in either of the universities, before the vice-chancellor of the respective universities for the time being, or his deputy: and the said declaration or acknowledgment shall be subscribed before the respective archbishop, bishop, or ordinary of the diocese, by every other person thereby enjoined to subscribe the same; upon pain that all and every of the persons aforesaid failing in such subscription, shall lose and forfeit such respective deanery, canonry, prebend, mastership, headship, fellowship, professor's place, reader's place, parsonage, vicarage, ecclesiastical dignity or promotion, curate's place, lecture, and school, and shall be utterly disabled and (*ipso facto*) deprived of the same; and that every such respective deanery, canonry, prebend, mastership, headship, fellowship, professor's place, reader's place, parsonage, vicarage, ecclesiastical dignity or promotion, curate's place, lecture, and school, shall be void, as if such person so failing were naturally dead.

The penalty for not subscribing.

XI. And if any schoolmaster or other person, instructing or teaching youth in any private house or family as a tutor or schoolmaster, shall instruct or teach any youth as a tutor or schoolmaster, before licence obtained from his respective archbishop,

Schoolmasters in private houses.

bishop, or ordinary of the diocese, according to the laws and statutes of this realm, (for which he shall pay twelve pence only.) and before such subscription and acknowledgment made as aforesaid; then every such schoolmaster and other, instructing and teaching as aforesaid, shall, for the first offence, suffer three months' imprisonment without bail or mainprize; and for every second, and other such offence, shall suffer three months' imprisonment without bail or mainprize; and also forfeit to his majesty the sum of five pounds: and after such subscription made, every such parson, vicar, curate, and lecturer, shall procure a certificate under the hand and seal of the respective archbishop, bishop, or ordinary of the diocese, (who are hereby enjoined and required, upon demand, to make and deliver the same,) and shall publicly and openly read the same, together with the declaration or acknowledgment aforesaid, upon some Lord's day within three months then next following, in his parish church where he is to officiate, in the presence of the congregation there assembled, in the time of divine service, upon pain that every person failing therein shall lose such parsonage, vicarage, or benefice, curate's place, or lecturer's place respectively, and shall be utterly disabled, and *ipso facto* deprived of the same; and that the said parsonage, vicarage, or benefice, curate's place, or lecturer's place, shall be void as if he was naturally dead.

What to be omitted in the declaration after the 25th of March, 1682.

XII. Provided always, that from and after the twenty-fifth day of March, which shall be in the year of our Lord God one thousand six hundred eighty-two, there shall be omitted in the said declaration or acknowledgment so to be subscribed and read, these words following, *scilicet*:

"And I do declare, that I do hold there lies no obligation on me, or on any other person, from the oath commonly called, The solemn League and Covenant, to endeavour any change or alteration of government either in church or state, and that the same was in itself an unlawful oath, and imposed upon the subjects of this realm against the known laws and liberties of this kingdom."

So as none of the persons aforesaid shall from thenceforth be at all obliged to subscribe or read that part of the said declaration or acknowledgment.

Persons not ordained according to episcopal ordination shall not hold any ecclesiastical promotion, &c.

XIII. Provided always, and be it enacted, that from and after the feast of St. Bartholomew, which shall be in the year of our Lord one thousand six hundred sixty and two, no person who is now incumbent, and in possession of any parsonage, vicarage, or benefice, and who is not already in holy orders by episcopal ordination, or shall

not before the said feast-day of St. Bartholomew be ordained priest or deacon, according to the form of episcopal ordination, shall have, hold, or enjoy the said parsonage, vicarage, benefice with cure, or other ecclesiastical promotion within this kingdom of England, or the dominion of Wales, or town of Berwick-upon-Tweed, but shall be utterly disabled, and (*ipso facto*) deprived of the same, and all his ecclesiastical promotions shall be void, as if he was naturally dead.

XIV. And be it further enacted by the authority aforesaid, that no person whatsoever shall thenceforth be capable to be admitted to any parsonage, vicarage, benefice, or other ecclesiastical promotion or dignity whatsoever, nor shall presume to consecrate and administer the holy sacrament of the Lord's supper, before such time as he shall be ordained priest, according to the form and manner in and by the said book prescribed, unless he have formerly been made priest by episcopal ordination; upon pain to forfeit for every offence the sum of one hundred pounds; one moiety thereof to the king's majesty, the other moiety thereof to be equally divided between the poor of the parish where the offence shall be committed; and such person or persons as shall sue for the same by action of debt, bill, plaint, or information, in any of his majesty's courts of record, wherein no essoin, protection, or wager of law shall be allowed, and to be disabled from taking or being admitted into the order of priest, by the space of one whole year then next following.

XV. Provided that the penalties in this act shall not extend to the foreigners or aliens of the foreign reformed churches allowed or to be allowed by the king's majesty, his heirs and successors, in England.

XVI. Provided always, that no title to confer or present by lapse, shall accrue by any avoidance or deprivation (*ipso facto*) by virtue of this statute, but after six months after notice of such avoidance or deprivation given by the ordinary to the patron, or such sentence of deprivation openly and publicly read in the parish church of the benefice, parsonage, or vicarage becoming void, or whereof the incumbent shall be deprived by virtue of this act.

XVII. And be it further enacted by the authority aforesaid, that no form or order of common prayers, administration of sacraments, rites, or ceremonies, shall be openly used in any church, chapel, or other public place of or in any college or hall in either of the universities, the colleges of Westminster, Winchester, or Eton, or any of them, other than what is prescribed and appointed to be used in and by the said book; and that the present governor or head of

No other form of common prayer to be openly used in any church or public place.



every college and hall in the said universities, and of the said colleges of Westminster, Winchester, and Eton, within one month after the feast of St. Bartholomew, which shall be in the year of our Lord one thousand six hundred sixty and two; and every governor or head of any of the said colleges or halls hereafter to be elected or appointed, within one month next after his election or collation, and admission into the same government or headship, shall openly and publicly in the church, chapel, or other public place of the same college or hall, and in the presence of the fellows and scholars of the same, or the greater part of them then resident, subscribe unto the Nine and thirty Articles of Religion, mentioned in the statute made in the thirteenth year of the reign of the late Queen Elizabeth, and unto the said book, and declare his unfeigned assent and consent unto, and approbation of, the said articles, and of the same book, and to the use of all the prayers, rites, and ceremonies, forms, and orders, in the said book prescribed and contained, according to the form aforesaid; and that all such governors or heads of the said colleges and halls, or any of them, as are or shall be in holy orders, shall once (at least) in every quarter of the year, (not having a lawful impediment,) openly and publicly read the morning prayer and service in and by the said book appointed to be read in the church, chapel, or other public place of the same college or hall; upon pain to lose, and be suspended of and from all the benefits and profits belonging to the same government or headship, by the space of six months, by the visitor or visitors of the same college or hall; and if any governor or head of any college or hall, suspended for not subscribing unto the said articles and book, or for not reading of the morning prayer and service as aforesaid, shall not at or before the end of six months next after such suspension, subscribe unto the said articles and book, and declare his consent thereunto as aforesaid, or read the morning prayer and service as aforesaid, then such government or headship shall be (*ipso facto*) void.

XVIII. Provided always, that it shall and may be lawful to use the morning and evening prayer, and all other prayers and service prescribed in and by the said book, in the chapels or other public places of the respective colleges and halls in both the universities, in the colleges of Westminster, Winchester, and Eton, and in the convocations of the clergy of either province, in Latin, any thing in this act contained to the contrary notwithstanding.

XIX. And be it further enacted by the authority aforesaid, that no person shall be or be received as a lecturer, or permitted,

Subscription to  
the Thirty-  
nine Articles  
mentioned in  
the statute  
13 Eliz. c. 12.

Who may use  
the service in  
Latin.

Lectures.



suffered, or allowed to preach as a lecturer, or to preach or read any sermon or lecture in any church, chapel, or other place of public worship, within this realm of England, or the dominion of Wales, and town of Berwick-upon-Tweed, unless he be first approved, and thereunto licensed by the archbishop of the province or bishop of the diocese, or (in case the see be void) by the guardian of the spiritualities, under his seal, and shall in the presence of the same archbishop or bishop, or guardian, read the Nine and thirty Articles of Religion mentioned in the statute of the thirteenth year of the late Queen Elizabeth, with declaration of his unfeigned assent to the same; and that every person and persons who now is, or hereafter shall be licensed, assigned, and appointed, or received as a lecturer, to preach upon any day of the week in any church, chapel, or place of public worship within this realm of England, or places aforesaid, the first time he preacheth (before his sermon) shall openly, publicly, and solemnly read the common prayers and service in and by the said book appointed to be read for that time of the day, and then and there publicly and openly declare his assent unto, and approbation of, the said book, and to the use of all the prayers, rites, and ceremonies, forms, and orders therein contained and prescribed, according to the form before appointed in this act: and also shall upon the first lecture day of every month afterwards, so long as he continues lecturer or preacher there, at the place appointed for his said lecture or sermon, before his said lecture or sermon, openly, publicly, and solemnly read the common prayers and service in and by the said book appointed to be read for that time of the day at which the said lecture or sermon is to be preached, and after such reading thereof shall openly and publicly, before the congregation there assembled, declare his unfeigned assent and consent unto, and approbation of, the said book, and to the use of all the prayers, rites, and ceremonies, forms and orders, therein contained and prescribed, according to the form aforesaid; and that all and every such person and persons who shall neglect or refuse to do the same, shall from thenceforth be disabled to preach the said or any other lecture or sermon in the said or any other church, chapel, or place of public worship, until such time as he and they shall openly, publicly, and solemnly read the common prayers and service appointed by the said book, and conform in all points to the things therein appointed and prescribed according to the purport, true intent, and meaning of this act.

13 Eliz. c. 12.

XX. Provided always, that if the said sermon or lecture be to be Lectures in

cathedral or  
collegiate  
churches.

The penalty  
upon persons  
disabled that  
preach.

Explained by  
15 Car. II. c. 6,  
s. 7.

Common  
prayer to be  
read before  
every lecture,  
and the lec-  
turer to be pre-  
sent.

Proviso for  
sermons and  
lectures in the  
universities.

Statutes  
formerly made  
for uniformity  
of common  
prayer, con-  
firmed, &c.

preached or read in any cathedral or collegiate church or chapel, it shall be sufficient for the said lecturer, openly at the time aforesaid, to declare his assent and consent to all things contained in the said book, according to the form aforesaid.

XXI. And be it further enacted by the authority aforesaid, that if any person who is by this act disabled to preach any lecture or sermon, shall, during the time that he shall continue and remain so disabled, preach any sermon or lecture; that then for every such offence, the person and persons so offending shall suffer three months' imprisonment in the common gaol without bail or mainprize; and that any two justices of the peace of any county of this kingdom and places aforesaid, and the mayor or other chief magistrate of any city or town corporate within the same, upon certificate from the ordinary of the place made to him or them of the offence committed, shall and are hereby required to commit the person or persons so offending, to the gaol of the same county, city, or town corporate accordingly.

XXII. Provided always, and be it further enacted by the authority aforesaid, that at all and every time and times when any sermon or lecture is to be preached, the common prayers and service in and by the said book appointed to be read for that time of the day, shall be openly, publicly, and solemnly read by some priest or deacon, in the church, chapel, or place of public worship, where the said sermon or lecture is to be preached, before such sermon or lecture be preached, and that the lecturer then to preach shall be present at the reading thereof.

XXIII. Provided nevertheless, that this act shall not extend to the university churches in the universities of this realm, or either of them, when or at such times as any sermon or lecture is preached or read in the said churches, or any of them, for or as the public university sermon or lecture; but that the same sermons and lectures may be preached or read in such sort and manner as the same have been heretofore preached or read; this act or anything herein contained to the contrary thereof in any wise notwithstanding.

XXIV. And be it further enacted by the authority aforesaid, that the several good laws and statutes of this realm, which have been formerly made, and are now in force, for the uniformity of prayer and administration of the sacraments, within this realm of England and places aforesaid, shall stand in full force and strength, to all intents and purposes whatsoever, for the establishing and confirming

of the said book, intituled, "The Book of Common Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the use of the Church of England; together with the Psalter or Psalms of David, pointed as they are to be sung or said in Churches, and the Form or Manner of making, ordaining, and consecrating of Bishops, Priests, and Deacons," herein before mentioned to be joined and annexed to this act; and shall be applied, practised, and put in ure for the punishing of all offences contrary to the said laws, with relation to the book aforesaid, and no other.

XXV. Provided always, and be it further enacted by the authority aforesaid, that in all those prayers, litanies, and collects, which do any way relate to the king, queen, or royal progeny, the names be altered and changed from time to time, and fitted to the present occasion, according to the direction of lawful authority.

Litanies, &c.  
relating to the  
king, &c.

XXVI. Provided also, and be it enacted by the authority aforesaid, that a true printed copy of the said book, intituled, "The Book of Common Prayer and the Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the Use of the Church of England, together with the Psalter or Psalms of David, pointed as they are to be sung or said in Churches, and the Form and Manner of making, ordaining, and consecrating of Bishops, Priests, and Deacons," shall at the costs and charges of the parishioners of every parish church and chapelry, cathedral church, college and hall, be attained and gotten before the feast-day of St. Bartholomew, in the year of our Lord one thousand six hundred sixty and two; upon pain of forfeiture of three pounds by the month, for so long time as they shall then after be unprovided hereof, by every parish or chapelry, cathedral church, college, and hall, making default therein.

True copies of  
the Book of  
Common  
Prayer to be  
provided in all  
churches, &c.

XXVII. Provided always, and be it enacted by the authority aforesaid, that the Bishops of Hereford, St. David's, Asaph, Bangor, and Landaff, and their successors, shall take such order among themselves, for the souls' health of the flocks committed to their charge within Wales, that the book hereunto annexed be truly and exactly translated into the British or Welsh tongue; and that the same so translated, and being by them, or any three of them at the least, viewed, perused, and allowed, be imprinted to such number at least, so that one of the said books so translated and imprinted, may be had for every cathedral, collegiate and parish church, and chapel of ease, in the said respective dioceses and places in Wales, where the

Proviso for the  
Bishops of  
Hereford, &c.



Welsh is commonly spoken or used, before the first day of May, one thousand six hundred sixty-five ; and that from and after the imprinting and publishing of the said book so translated, the whole divine service shall be used and said by the ministers and curates throughout all Wales within the said dioceses, where the Welsh tongue is commonly used, in the British or Welsh tongue, in such manner and form as is prescribed according to the book hereunto annexed to be used in the English tongue, differing nothing in any order or form from the said English book ; for which book, so translated and imprinted, the churchwardens of every the said parishes shall pay, out of the parish money in their hands for the use of the respective churches, and be allowed the same on their account ; and that the said bishops and their successors, or any three of them at the least, shall set and appoint the price for which the said book shall be sold : and one other Book of Common Prayer in the English tongue shall be bought and had in every church throughout Wales in which the Book of Common Prayer in Welsh is to be had by force of this act, before the first day of May, one thousand six hundred sixty and four, and the same books to remain in such convenient places within the said churches, that such as understand them may resort at all convenient times to read and peruse the same, and also such as do not understand the said language, may, by conferring both tongues together, the sooner attain to the knowledge of the English tongue ; any thing in this act to the contrary notwithstanding : and until printed copies of the said book so to be translated may be had and provided, the form of common prayer established by parliament before the making of this act, shall be used as formerly in such parts of Wales where the English tongue is not commonly understood.

True copies of  
this act, and  
the Book of  
Common  
Prayer, by  
whom, and  
how to be had  
and kept.

XXVIII. And to the end that the true and perfect copies of this act, and the said book hereunto annexed, may be safely kept and perpetually preserved, and for the avoiding of all disputes for the time to come ; be it therefore enacted by the authority aforesaid that the respective deans and chapters of every cathedral or collegiate church within England and Wales shall, at their proper costs and charges, before the twenty-fifth day of December, one thousand six hundred sixty and two, obtain under the great seal of England a true and perfect printed copy of this act, and of the said book annexed hereunto, to be by the said deans and chapters, and their successors, kept and preserved in safety for ever, and to be always produced and shewed forth in any court of record, as often as the



shall be thereunto lawfully required; and also there shall be delivered true and perfect copies of this act, and of the same book, into the respective courts at Westminster, and into the tower of London, to be kept and preserved for ever among the records of the said courts, and the records of the tower, to be also produced and shewed forth in any court, as need shall require; which said books so to be exemplified under the great seal of England, shall be examined by such persons as the king's majesty shall appoint, under the great seal of England, for that purpose, and shall be compared with the original book hereunto annexed, and shall have power to correct and amend in writing any error committed by the printer in the printing of the same book, or of any thing therein contained, and shall certify in writing under their hands and seals, or the hands and seals of any three of them, at the end of the same book, that they have examined and compared the same book, and find it to be a true and perfect copy; which said books, and every one of them, so exemplified under the great seal of England as foresaid, shall be deemed, taken, adjudged, and expounded to be good and available in the law, to all intents and purposes whatsoever, and shall be accounted as good records as this book itself hereunto annexed; any law or custom to the contrary in any wise notwithstanding.

XXIX. Provided also, that this act, nor any thing therein contained, shall not be prejudicial or hurtful unto the king's professor of the law within the university of Oxford, for or concerning the rebend of Shipton within the cathedral church of Sarum, united and annexed unto the place of the same king's professor for the time being by the late King James of blessed memory.

Proviso for the king's professor of law in Oxford.

XXX. Provided always, that whereas the six and thirtieth article of the Nine and Thirty Articles agreed upon by the archbishops and bishops of both provinces, and the whole clergy, in the convocation holden at London, in the year of our Lord one thousand five hundred sixty two, for the avoiding of diversities of opinions, and for establishing of consent touching true religion, is in these words following, viz.:

“That the Book of Consecration of Archbishops and Bishops, and ordaining of Priests and Deacons, lately set forth in the time of King Edward the Sixth, and confirmed at the same time by authority of parliament, doth contain all things necessary to such consecration and ordaining, neither hath it any thing that of itself is superstitious and ungodly: and therefore, whosoever are consecrated or ordered

Proviso concerning the thirty-sixth article agreed in the convocation.  
Anno 1562.

according to the rites of that book, since the second year of the aforesaid King Edward unto this time, or hereafter shall be consecrated or ordered according to the same rites, we decree all such to be rightly, orderly, and lawfully consecrated and ordered ;”

XXXI. It be enacted, and be it therefore enacted by the authority aforesaid, that all subscriptions hereafter to be had or made unto the said articles by any deacon, priest, or ecclesiastical person, or other person whatsoever, who by this act or any other law now in force, is required to subscribe unto the said articles, shall be construed, and be taken to extend, and shall be applied (for and touching the said six and thirtieth article) unto the book containing the form and manner of making, ordaining, and consecrating of bishops, priests, and deacons, in this act mentioned, in such sort and manner as the same did heretofore extend unto the book set forth in the time of King Edward the Sixth, mentioned in the said six and thirtieth article ; any thing in the said article, or in any statute, act, or canon heretofore had or made, to the contrary thereof in any wise notwithstanding.

The Common Prayer used by authority of parliament, 1 Eliz. c. 2, 8 Eliz. c. 1, to be used until Bartholomew Day, 1662. Expired. Farther provisions relating hereto, 1 G. & M. St. I. c. 18, and 23 Geo. II. c. 28.

XXXII. Provided also, that the Book of Common Prayer, and Administration of the Sacraments, and other Rites and Ceremonies of this Church of England, together with the Form and Manner of ordaining and consecrating Bishops, Priests, and Deacons, heretofore in use, and respectively established by act of parliament in the first and eighth years of Queen Elizabeth, shall be still used and observed in the church of England, until the feast of St. Bartholomew, which shall be in the year of our Lord God one thousand six hundred sixty and two.

STAT. 35 & 36 VICT. c. 35. A.D. 1872.

*An Act for the Amendment of the Act of Uniformity.*

[18th July, 1872.]



WHEREAS by the Act of Uniformity it is enacted that all singular ministers in any cathedral, collegiate, or parish church or chapel, or other place of public worship in England, shall be bound to say and use the Morning Prayer, Evening Prayer, celebration and administration of both the Sacraments, and all other the public and common prayer, in such order and form as is mentioned in the Book of Common Prayer annexed to the said Act :

And whereas in the year one thousand eight hundred and sixty-nine commissioners were appointed by Her Majesty to inquire and consider, amongst other matters, the differences of practice which have arisen from varying interpretations put upon the rubrics, orders, and directions for regulating the course and conduct of public worship, the administration of the sacraments, and the other services contained in the Book of Common Prayer, with a view of explaining or amending the said rubrics, orders, and directions so as to secure general uniformity of practice in such matters as may be deemed essential, and to report thereon from time to time, having regard not only to the said rubrics, orders, and directions, but also to any other laws or customs relating to the matters aforesaid, with power to suggest any alterations, improvements, or amendments with respect to such matters or any of them :

And whereas the said commissioners have by their Report, dated the thirty-first day of August, one thousand eight hundred and seventy, recommended in manner therein mentioned :

And whereas Her Majesty was pleased to authorise the Convocations of Canterbury and York, to consider the said report of the said Commissioners, and to report to Her Majesty thereon, and the said Convocations have accordingly made their first reports to Her Majesty :

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present Parliament assembled, and by the authority of the same, as follows :—

I. In this Act,—

Definitions.

The term “Act of Uniformity” means the Act of the fourteenth year of the reign of King Charles the Second, chapter four, intituled “An Act for the Uniformity of Public Prayers and Administration of Sacraments and other Rites and Ceremonies, and for establishing the Form of Making, Ordaining, and Consecrating Bishops, Priests, and Deacons in the Church of England,” and includes the enactments confirmed and applied by that Act to the Book of Common Prayer :

The term “Book of Common Prayer” means the book annexed to the said Act of the reign of King Charles the Second, and intituled “The Book of Common Prayer and Administration of the Sacraments and other Rites and Ceremonies of the Church according to the Use of the Church of England, together with the Psalter or Psalms of David pointed as they are to be sung



or said in Churches, and the Form or Manner of Making, Ordaining, and Consecrating of Bishops, Priests, and Deacons :”  
 The term “cathedral” means a cathedral or collegiate church in which the Book of Common Prayer is required by the Act of Uniformity to be used:

The term “church” means any parish church, chapel, or other place of public worship which is not a cathedral as before defined, and in which the Book of Common Prayer is required by the Act of Uniformity to be used.

Use of  
shortened form  
of Morning  
and Evening  
Prayer.

II. The shortened Order for Morning Prayer or for Evening Prayer, specified in the schedule to this Act, may, on any day except Sunday, Christmas Day, Ash Wednesday, Good Friday, and Ascension Day, be used, if in a cathedral in addition to, and if in a church in lieu of the Order for Morning Prayer or for Evening Prayer respectively prescribed by the Book of Common Prayer.

Special service  
for special  
occasions.

III. Upon any special occasion approved by the ordinary, there may be used in any cathedral or church a special form of service approved by the ordinary, so that there be not introduced into such service anything, except anthems or hymns, which does not form part of the Holy Scriptures or Book of Common Prayer.

Additional  
service on  
Sundays and  
holy-days.

IV. An additional form of service varying from any form prescribed by the Book of Common Prayer may be used at any hour on any Sunday or holy-day in any cathedral or church in which there are duly read, said, or sung as required by law on such Sunday or holy-day at some other hour or hours the Order for Morning Prayer, the Litany, such part of the Order for the Administration of the Lord’s Supper or Holy Communion as is required to be read on Sundays and holy-days if there be no Communion, and the Order for Evening Prayer, so that there be not introduced into such additional service any portion of the Order for the Administration of the Lord’s Supper or Holy Communion, or anything, except anthems or hymns, which does not form part of the Holy Scriptures or Book of Common Prayer, and so that such form of service and the mode in which it is used is for the time being approved by the ordinary; provided that nothing in this section shall affect the use of any portion of the Book of Common Prayer as otherwise authorized by the Act of Uniformity or this Act.

Separation of  
services.

V. Whereas doubts have arisen as to whether the following forms of service, that is to say, the Order for Morning Prayer, the Litany, and the Order for the Administration of the Lord’s Supper or Holy Communion, may be used as separate services, and it is expedient



to remove such doubts: Be it therefore enacted and declared that any of such forms of service may be used together or in varying order as separate services, or that the Litany may be said after the third collect in the Order for Evening Prayer, either in lieu of or in addition to the use of the Litany in the Order for Morning Prayer, without prejudice nevertheless to any legal powers vested in the ordinary; and any of the said forms of service may be used with or without the preaching of a sermon or lecture, or the reading of a homily.

VI. Whereas doubts have arisen as to whether a sermon or lecture may be preached without the common prayers and services appointed by the Book of Common Prayer for the time of day being previously read, and it is expedient to remove such doubts: Be it therefore enacted and declared, that a sermon or lecture may be preached without the common prayers or services appointed by the Book of Common Prayer being read before it is preached, so that such sermon or lecture be preceded by any service authorized by this Act, or by the Bidding Prayer, or by a collect taken from the Book of Common Prayer, with or without the Lord's Prayer.

Preaching a sermon without previous service.

VII. Nothing in this Act shall affect the provision with respect to the chapels of colleges in the universities of Oxford, Cambridge, and Durham, which is contained in section six of the Universities Tests Act, 1871.

Saving of 34 & 35 Vict. c. 26, s. 6.

VIII. The schedule to this Act, and the notes thereto and directions therein, shall be construed and have effect as part of this Act.

Effect of schedule.

IX. This Act may be cited as "The Act of Uniformity Amendment Act, 1872."

Short title.



## CHAPTER II.

SPECIAL STATUTES RELATING TO PUBLIC  
WORSHIP.

STAT. 3 &amp; 4 EDWARDI VI. c. 10. A.D. 1549.

*An Act for the Abolishing and putting away of divers Books and  
Images.*

Certain books  
and images shall  
be abolished.  
2 & 3 Ed. VI.  
c. 1, 3 Jac. I.  
c. 5.



HERE the King's most excellent Majesty hath orde-  
late set forth and established by authority of Par-  
liament, an uniform, quiet, and godly order for  
common and open prayer, in a book, intituled  
"The Book of Common Prayer and Administration  
of the Sacraments, and other Rites and Ceremonies  
of the Church," after the Church of England, to be used and ob-  
served in the said Church of England, agreeable to the order of the  
Primitive Church, much more comfortable unto his loving subject  
than other diversity of service, as heretofore of long time hath been  
used, being in the said book ordained, nothing to be read but the  
very pure Word of God, or which is evidently grounded upon the  
same; and in the other, things corrupt, untrue, vain, and supersti-  
tious, and as it were a preparation to superstition; which for that  
they be not called in, but permitted to remain undefaced, do not  
only give occasion to such perverse persons as do impugn the order  
and godly meaning of the King's said Book of Common Prayer, to  
continue in their old accustomed superstitious service, but also  
minister great occasion to diversity of opinions, rites, ceremonies  
and services: Be it therefore enacted by the King, our sovereign  
lord, the lords spiritual and temporal, and the Commons, in the pre-  
sent Parliament assembled, That all books called Antiphoner

Missals, Grailes, Processionals, Manuals, Legends, Pies, Portuasses, Primers in Latin or English, Couchers, Journals, Ordinals, or other books or writings whatsoever heretofore used for service of the Church, written or printed in the English or Latin tongue, other than such as are or shall be set forth by the king's majesty, shall be by authority of this present act clearly and utterly abolished, extinguished, and forbidden for ever to be used or kept in this realm, or elsewhere within any the king's dominions.

II. And be it further enacted by the authority aforesaid, That if any person or persons, of what estate, degree, or condition soever he, she, or they be, body politic or corporate, that now have or hereafter shall have in his, her, or their custody, any the books or writings of the sorts aforesaid, or any images of stone, timber, alabaster, or earth, graven, carved, or painted, which heretofore have been taken out of any church or chapel, or yet stand in any church or chapel, and do not before the last day of June next ensuing deface and destroy, or cause to be defaced and destroyed, the same images and every of them, and deliver or cause to be delivered all and every the same books to the mayor, bailiff, constable, or churchwardens of the town where such books then shall be, to be by them delivered over openly within three months next following after the said delivery, to the archbishop, bishop, chancellor, or commissary of the same diocese, to the intent the said archbishop, bishop, chancellor, or commissary, and every of them, cause them immediately either to be openly burnt or otherwise defaced and destroyed; shall for every such book or books willingly retained in his, her, or their hands or custody within this realm, or elsewhere within any the king's dominions, and not delivered as is aforesaid, after the said last day of June, and be thereof lawfully convict, forfeit and lose to the king our sovereign lord for the first offence 20s., and for the second offence shall forfeit and lose (being thereof lawfully convict) £4, and for the third offence shall suffer imprisonment at the king's will.

Images taken out of, or yet remaining in churches, shall be destroyed.

Popish books shall be first delivered to the mayor, &c. and then by him to the bishop, &c. to be burnt or otherwise defaced.

III. And be it further enacted by the authority aforesaid, That if any mayors, bailiffs, constables, or churchwardens do not, within three months after receipt of the same books, deliver or cause to be delivered such books so by them received, to the archbishop, bishop, chancellor, or commissary of their diocese; and if the said archbishops, bishops, chancellors, or commissaries, do not, within forty days after the receipt of such books, burn, deface, and destroy, or cause to be burned, defaced, or destroyed the same books and every

The penalty of mayor, &c. or bishop, &c. omitting their duty herein.

of them ; that then they and every of them so offending, shall lose and forfeit to our sovereign lord the king, being thereof lawfully convict, £11. The one-half of all such forfeitures shall be to any of the king's subjects that will sue for the same in any of the king's Courts of Record, by bill, plaint, action of debt, or information : in which action no essoin, protection, wager of law or other delay shall be allowed.

Justices of Assize and Peace shall hear and determine these offences.

IV. And for better execution of the same act, be it enacted by the authority aforesaid, That as well justices of assize in their circuits, as justices of peace within the limits of their commission in the General Sessions, shall have full power and authority to inquire of the offences aforesaid, and to hear and determine the same, in such form as they may do in other such like cases.

Primers set out by Hen. VIII. being purged may be still retained.

V. Provided also, and be it enacted by the authority aforesaid, That any person or persons may use, keep, have, and retain any primers in the English or Latin tongue, set forth by the late king of famous memory, King Henry VIII., so that the sentences of invocation or prayer to saints in the same primers be blotted or clearly put out of the same ; any thing in this act to the contrary notwithstanding.

Images upon tombs shall still remain.

VI. Provided always, That this act, or any thing therein contained, shall not extend to any image or picture set or graven upon any tomb in any church, chapel, or churchyard, only for a monument of any king, prince, nobleman, or other dead person, which hath not been commonly reputed and taken for a saint, but that such pictures and images may stand and continue in like manner and form, as if this act had never been had nor made ; any thing in this act to the contrary in any wise notwithstanding. [Repealed by 1 Ma. Sess. 2, c. 2, which act is repealed by 1 Jac. I. c. 25, s. 48.]

STAT. 5 & 6 EDWARDI VI. c. 3. A.D. 1552.

*An Act for the Keeping Holidays and Fasting Days.*

Which days only in the year shall be holy-days, and which shall be fasting days.



ERASMUCH as at all times men be not so mindful to laud and praise God, so ready to resort and hear God's holy Word, and to come to the Holy Communion and other laudable rites, which are to be observed in every Christian congregation, as their bounden duty doth require. Therefore, to call men to remembrance



of their duty, and to help their infirmity, it hath been wholesomely provided, that there should be some certain times and days appointed, wherein the Christians should cease from all other kind of labours, and should apply themselves only and wholly unto the aforesaid holy works, properly pertaining unto true religion; that is, to hear, to learn, and to remember Almighty God's great benefits, his manifold mercies, his inestimable gracious goodness, so plentifully poured upon all his creatures, and that of his infinite and unspeakable goodness, without any man's desert; and in remembrance hereof, to render unto him most high and hearty thanks, with prayers and supplications for the relief of all our daily necessities. And because these be the chief and principal works wherein man is commanded to worship God, and to properly pertain unto the first table; therefore as these works are most commonly, and also may well be called God's service, so the times appointed specially for the same are called holy-days; not for the matter and nature either of the time or day, nor for any of the saints' sake, whose memories are had on those days (for so all days and times considered are God's creatures, and all of like holiness), but for the nature and condition of those godly and holy works, wherewith only God is to be honoured, and the congregation to be edified, whereunto such times and days are sanctified and hallowed; this is to say, separated from all profane uses, and dedicated and appointed, not unto any saint or creature, but only unto God and his true worship. Neither is it to be thought that there is any certain time or definite number of days prescribed in Holy Scripture, but that the appointment both of the time and also of the number of the days, is left by the authority of God's Word to the liberty of Christ's Church, to be determined and assigned orderly in every country, by the discretion of the rulers and ministers thereof, as they shall judge most expedient to the true setting forth of God's glory, and the edification of their people. Be it therefore enacted by the king our sovereign lord, with the assent of the lords spiritual and temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, That all the days hereafter mentioned shall be kept and commanded to be kept holy-days, and none other; that is to say, all Sundays in the year, the days of the feast of the Circumcision of our Lord Jesus Christ, of the Epiphany of the Purification of the Blessed Virgin, of Saint Matthew the Apostle, of the Annunciation of the Blessed Virgin, of Saint Mark the Evangelist, of Saint Philip and Jacob the Apostles, of the Ascension

This Act is not  
on the Roll.

Wherefore  
some days are  
more called  
holy-days than  
other.

All these days  
shall be kept  
holy-days, and  
none other.

of our Lord Jesus Christ, of the Nativity of Saint John Baptist, of Saint Peter the Apostle, of Saint James the Apostle, of Saint Bartholomew the Apostle, of Saint Matthew the Apostle, of Saint Michael the Archangel, of Saint Luke the Evangelist, of Saint Simon and Jude the Apostles, of All Saints, of Saint Andrew the Apostle, of Saint Thomas the Apostle, of the Nativity of our Lord, of Saint Stephen the Martyr, of Saint John the Evangelist, of the holy Innocents, Monday and Tuesday in Easter Week, and Monday and Tuesday in Whitsun week. And that none other day shall be kept and commanded to be kept holy-day, or to abstain from lawful bodily labour.

Which days shall be commanded and kept fasting days.

II. And it is also enacted by the authority aforesaid, That every even or day next going before any of the aforesaid days of the feasts of the Nativity of our Lord, of Easter, of the Ascension of our Lord, Pentecost, and the Purification and the Annunciation of the aforesaid Blessed Virgin, of All Saints, and of all the said feasts of the Apostles (other than of Saint John the Evangelist, and Philip and Jacob), shall be fasted, and commanded to be kept and observed, and that none other even or day shall be commanded to be fasted.

Punishment of offenders by the Ecclesiastical Law.

III. And it is enacted by the authority aforesaid, That it shall be lawful to all archbishops and bishops in their dioceses, and to all other having ecclesiastical or spiritual jurisdiction, to inquire of every person that shall offend in the premisses, and to punish every such offended by the censures of the Church, and to enjoin him or them such penance as shall be to the spiritual judge by his direction thought meet and convenient.

Abstinence from flesh in Lent, Fridays and Saturdays. 2 & 3 Ed. VI. c. 10. EXP.

IV. Provided always, That this act, or any thing therein contained, shall not extend to abrogate or take away the abstinence from flesh in Lent, or on Fridays and Saturdays, or on any other day which is already appointed so to be kept, by virtue of an act made and provided in the third year of the reign of our sovereign lord the king's majesty that now is, saving only of those evens or days whereof the holy-day next following is abrogated by this statute; any thing above-mentioned to the contrary in any wise notwithstanding.

When the Saturday shall be fasted instead of the Sunday.

V. Provided also, and be it enacted by the authority aforesaid, That when and so often as it shall chance any of the said feasts (the evens whereof be by this statute commanded to be observed and kept fasting-day) to fall upon the Monday; That then, as it hath always been heretofore accustomedly used, so hereafter the Saturday then next going before any such feast or holy-day, and not the

Sunday, shall be commanded to be fasted for the even of any such feast or holy-day; any thing in this statute before mentioned or declared to the contrary in any wise notwithstanding.

VI. Provided always, and it is enacted by the authority aforesaid, That it shall be lawful to every husbandman, labourer, fisherman, and to all and every other person or persons, of what estate, degree, or condition he or they be, upon the holy-days aforesaid, in harvest, or at any other time in the year when necessity shall require, to labour, ride, fish, or work any kind of work, at their free wills and pleasure; any thing in this act to the contrary in any wise notwithstanding.

In what cases some persons may labour upon the holy-day.

VII. Provided always, and be it enacted by the authority aforesaid, That it shall be lawful to the knights of the right honourable Order of the Garter, and to every of them, to keep and celebrate solemnly the feast of their order, commonly called St. George's Feast, yearly from henceforth the twenty-second, twenty-third, and twenty-fourth days of April, and at such other time and times, as yearly shall be thought convenient by the king's highness, his heirs and successors, and the said knights of the said honourable order, or any of them, now being, or hereafter to be; anything in this act heretofore mentioned to the contrary notwithstanding. [Repealed by 1 Ma. Sess. 2, c. 2, which is repealed by 1 Jac. 1. c. 25, s. 48.]

Knights of the Garter may solemnize St. George's feast.

#### STAT. 5 & 6 EDWARDI V. c. 4. A.D. 1552.

##### *Against Quarrelling and Fighting in Churches and Churchyards.*

**F**ORASMUCH as of late divers and many outrageous and barbarous behaviours and acts have been used and committed by divers ungodly and irreligious persons, by quarrelling, brawling, fraying, and fighting openly in churches and churchyards: Therefore it is enacted by the king our sovereign lord, with the assent of the lords spiritual and temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, That if any person whatsoever shall, at any time after the first day of May next coming, by words only, quarrel, chide, or brawl in any church or churchyard, that then it shall be lawful unto the ordinary of the place where the same offence shall be done, and proved by two lawful witnesses, to suspend every person so offending; that is to say, if he be a layman, *ab ingressu ecclesiæ*, and if he be a clerk, from

The penalty for striking or drawing a weapon in church or churchyard. Hetley, 86.



the ministration of his office, for so long time as the said ordinary shall by his discretion think meet and convenient, according to the fault.

The penalty for smiting in a church, &c.

II. And further it is enacted by the authority aforesaid, That if any person or persons, after the said first day of May shall smite or lay violent hands upon any other, either in any church or churchyard, that then *ipso facto* every person so offending shall be deemed excommunicate, and be excluded from the fellowship and company of Christ's congregation.

The penalty for drawing or smiting with a weapon in the church, &c.

2 Leon. 188.

Cro. Jac. 462.

Cro. El. 224,

231.

Cro. Car. 464.

1 Roll 90.

Dyer 275, pl.

48.

See 1 Bur. 243.

III. And also it is enacted by the authority aforesaid, That if any person after the said first day of May shall maliciously strike any person with any weapon in any church or churchyard, or after the same first day of May shall draw any weapon in any church or churchyard, to the intent to strike another with the same weapon, that then every person so offending, and thereof being convicted by verdict of twelve men, or by his own confession, or by two lawful witnesses, before the justices of assize, justices of oyer and determiner, or justices of peace in their sessions, by force of this act, shall be adjudged by the same justices before whom such person shall be convicted, to have one of his ears cut off. And if the person or persons so offending have none ears, whereby they should receive such punishment as is before declared, that then he or they to be marked and burned in the cheek with a hot iron, having the letter F therein, whereby he or they may be known and taken for fray-makers and fighters; and besides that, every such person to be and stand *ipso facto* excommunicated, as is aforesaid.

#### STAT. I MARIÆ SESSION 2, c. 3. A.D. 1553.

##### *An Act against Offenders of Preachers and other Ministers in the Church.*

The penalty of disturbing of preachers and ministers in the church.

2 & 3 Ed. VI.

c. 1.

5 & 6 Ed. VI.

c. 1.



FORASMUCH as it is most necessary in every Christian commonwealth, to provide that tranquillity and peace may be preserved and continued amongst the people, and specially in Holy Church, in the time of Divine service, and administration of sacraments and sacramentals, as before this time it hath been accustomed in Holy Church within this realm; and that all things being contrary thereunto, or that are, or may be in disturbance thereof,



may by foresight be eschewed and avoided, and remedy therefor in due time provided, as well for the preservation of the queen's highness' peace, as for an universal quietness and order to be used within this realm.

II. Be it therefore enacted by the queen our sovereign lady, the lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That if any person or persons of their own power and authority, at any time or times after the twentieth day of December next coming, do or shall willingly and of purpose, by open and overt word, fact, act, or deed, maliciously or contemptuously molest, let, disturb, vex, or trouble, or by any other unlawful ways or means disquiet or misuse any preacher or preachers that now is, or that at any time or times hereafter shall be licensed, allowed, or authorized to preach by the queen's highness, or by any archbishop or bishop of this realm, or by any other lawful ordinary, or by any of the universities of Oxford and Cambridge, or otherwise lawfully authorized or charged by reason of his or their cure, benefice, or other spiritual promotion or charge, in any of his or their open sermon, preaching, or collation, that he or they shall make, declare, preach, or pronounce in any church, chapel, churchyard, or in any other place or places, used, frequented, or appointed, or that hereafter shall be used or appointed to be preached in.

III. Or if any person or persons, after the said twentieth day of December next coming, shall maliciously, willingly, or of purpose molest, let, disturb, vex, disquiet, or otherwise trouble, any parson, vicar, parish priest, or curate, or any lawful priest, preparing, saying, doing, singing, ministering, or celebrating the Mass, or other such Divine service, sacraments, or sacramentals, as was most commonly frequented and used in the last year of the reign of the late sovereign lord King Henry VIII., or that at any time hereafter shall be allowed, set forth, or authorized by the queen's majesty.

IV. Or if any person or persons, at any time or times after the said twentieth day of December, shall contemptuously, unlawfully, or maliciously, of their own power or authority, pull down, deface, spoil, abuse, break, or otherwise unreverently handle or order the most blessed, comfortable, and holy Sacrament of the Body and Blood of our Saviour Jesus Christ, commonly called the Sacrament of the Altar, being or that shall be in any church or chapel, or in any other decent place, or the pix or canopy wherein

Disturbing by word or deed a preacher in his sermon.

2 Bulstr. 47, 53.  
Aleyn 50.

Molesting a priest preparing or celebrating Mass or other service.

1 Mod. 168.  
Jones, Sir T.  
159.

Abusing the blessed Sacrament of the body and blood of Christ, or breaking any altar or crucifix.

the same sacrament is or shall be ; or unlawfully, contemptuously, or maliciously, of their own power and authority, pull down, deface, spoil, or otherwise break any altar or altars, or any crucifix or cross, that now or hereafter shall be in any church, chapel, or churchyard. That then every such offender and offenders in any the premises, his or their aider, procurer, or abettor, aiders, procurers, or abettors, immediately and forthwith, after any of the said act or acts, or other the said misdemeanours so committed, done, or made, or any time or times after, shall be apprehended, arrested, and taken by any constable or constables, churchwarden or churchwardens of the said parish, town, or place where the said offence or offences shall be so committed, made, or done, or by any other officer or officers, or by any other person or persons then being present at the time of the said offence or offences so unlawfully committed, made, or done.

V. Which person or persons so apprehended, taken, or arrested, with convenient speed shall be brought and carried to any justice of peace within the said shire, or within any city, borough, liberty, or town corporate wherein justices of peace be, where the said offence or offences shall be so committed, done, and made. And that the said justice of peace, upon due accusation thereupon had and made by the apprehender or apprehenders, or other person or persons, of any of the said person or persons so offending, forthwith shall commit the said person or persons so apprehended, arrested, and taken, to safe keeping and custody, as by the discretion of the said justice shall be thought most meet and convenient, and that within six days next and immediately after the said accusation so had and made to the said justice, the said justice with one other justice of peace in the said shire, city, borough, liberty, or town corporate, shall diligently examine the act or acts, offence or offences aforesaid.

The punishment of the offender for any of the crimes aforesaid.

VI. And if they the said two justices of peace shall upon their said examination find or perceive the said person or persons so accused guilty of any of the said offence or offences, whereof he or they shall be so accused, and that by two sufficient witnesses, or by his or their own confession or confessions, that then and immediately with convenient speed the said two justices shall commit and award the said person or persons so accused as is aforesaid, to the gaol of or for the said shire, city, borough, liberty, or town corporate, where the said offence or offences was so committed, made, or done, there to remain without bail or mainprise, by the space of three months then next ensuing, and further to the

next quarter sessions to be holden within the said shire, city, borough, liberty, or town corporate, next after the end of the said three months, at which said quarter sessions, the said person or persons so committed to the gaol as is aforesaid, upon his or their reconciliation and repentance in that behalf before the said justices of peace at the said sessions, shall be delivered and discharged out of prison and gaol, upon sufficient surety of his good abearing and behaviour, to be then and there taken by the said justices for one whole year then next ensuing, as by the discretion or discretions of the said justices then and there being, or of the more part of them, shall be thought meet and convenient. And if the said person or persons so in gaol as is aforesaid, will not be reconciled and repent at the said quarter sessions, that then the said person or persons immediately in time convenient shall be further awarded and committed to the said gaol by the said justices, or by the more part of them, there to remain without bail or mainprise, until he or they so committed and awarded to gaol as is aforesaid, shall be reconciled, and be penitent for his or their said offence or offences.

Godbolt, 246,  
Pl. 343.

VII. And be it further enacted by the authority aforesaid, That if any person or persons, at any time or times after the said twentieth day of December, of their own authority and power, willingly and unlawfully do rescue any offender or offenders so apprehended, taken, or arrested as is aforesaid, or will disturb, hinder, or let the said offender or offenders, so offending as is aforesaid, to be apprehended, taken, or arrested, that then every one of the said rescuers or disturbers shall suffer like imprisonment as is aforesaid, and further shall pay, forfeit, and lose for a fine, for every of his or their said offences, £5 to the queen's majesty, her heirs and successors.

The penalty for  
rescuing an  
offender, or  
disturbing the  
arrest.

VIII. And be it further enacted by the authority aforesaid, That if any of the offenders aforesaid be not taken, apprehended, or arrested, immediately in time convenient, as is aforesaid, but do escape or go away, that then the said escape shall be lawfully presented before the justices of peace in the said shire, city, borough, liberty, or town corporate, at the next quarter sessions to be holden where the said escape was made and suffered, and that then the inhabitants of the parish where the said escape was so suffered, shall forfeit and lose to the queen's majesty, her heirs and successors, for every such escape £5, to be levied and taken as other like merciaments and fines before this time hath been levied and taken upon any village, hundred, or town, for the escape of any murderer or other felon, for not making pursuit upon hue and cry,

The penalty if  
an offender be  
not taken, but  
doth escape.

13 Ed. I. stat. 2,  
c. 1.  
3 Hen. VII. c. 1.



according to the estatute of Winchester, and the estatute made and provided in the third year of the worthy King Henry VII.

What magistrates shall have authority to enquire of and punish the offenders.

IX. And be it further enacted by the authority aforesaid, That all and singular justices of peace, justices of assize, justices of Oyer and Determiner, and all and singular mayors, bailiffs, and justices of peace, within any city, borough, or town corporate in any parts within this realm, within the limits of their commission or commissions, shall have full power and authority by virtue of this act, after the said twentieth day of December, to inquire of all and singular the offences and misdemeanours aforesaid, and to hear and determine the same, and to set the fines and amerciaments of the said offender or offenders as is aforesaid.

The jurisdiction of the Law Ecclesiastical saved.

X. Provided always, and be it further enacted by the authority aforesaid, That this act, or any thing therein contained, shall not in any wise extend to abrogate and take away the authority, jurisdiction, power, and punishments of the Ecclesiastical laws, now standing and remaining in their force, of or for the punishment of any the offences and misdemeanours aforesaid, but that the authority, power, jurisdictions, and punishments of the said Ecclesiastical laws of and for any of the offences and misdemeanours aforesaid shall stand in full power and strength, and to be used and exercised in all and in every thing, as though this act had never been had and made; this present act, or any thing therein contained to the contrary thereof in any wise notwithstanding.

There shall be but one punishment for one offence.

Farther provisions relating hereto, see 1 El. c. 1 & 2; 13 El. c. 12; 23 El. c. 1; 13 & 14 Car. II. c. 4; 15 Car. II. c. 6; 1 W. & M. stat. 1, c. 18; 5 Ann. c. 5, and 23 Geo. II. c. 28.

XI. Provided always, and be it enacted, That whatsoever person offending in the premisses, shall for any of the offences afore recited receive punishment of the ordinary, having a testimonial thereof under the said ordinary's seal, shall not for the same offence eftsoons be convicted before the justice. And in likewise receiving for the said offences punishment by the justice, he shall not for the same offence eftsoons receive punishment of the ordinary; any thing in this act to the contrary notwithstanding.



## STAT. 34 &amp; 35 VICT. c. 37. A.D. 1871.

*An Act to amend the law relating to the Tables of Lessons and Psalter contained in the Prayer Book.*—[13th July 1871.]

**W**HEREAS commissioners were appointed by Her Majesty to inquire and consider (amongst other matters) the proper lessons appointed to be read in Morning and Evening Prayer on the Sundays and holy-days throughout the year, and the Table of First and Second Lessons contained in the Calendar in the Book of Common Prayer according to the use of the United Church of England and Ireland, with a view of suggesting and reporting whether any and what alterations and amendments might be advantageously made in the selection of Lessons to be read at the time of divine service :

And whereas the said commissioners have made a Report recommending that the revised Tables of Lessons proper to be read on Sundays and holy-days, and the revised Table of daily First and Second Lessons set out in the schedule to that Report and in the schedule to this Act, should be adopted in lieu of the Table of Proper Lessons to be read at Morning and Evening Prayer on the Sundays and other holy-days throughout the year, and the Table of daily First and Second Lessons in the calendar prefixed to the said Book of Common Prayer :

And whereas it is expedient to authorize the use of the said revised Tables of Lessons, and to make such consequential alterations as may be necessary in the directions contained in the said Book of Common Prayer respecting "the order how the rest of Holy Scripture is appointed to be read" :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

I. This Act may be cited as "The Prayer Book (Tables of Lessons) Act, 1871." Short title.

II. After the first day of January one thousand eight hundred and seventy-two, the directions respecting "the order how the rest of Holy Scripture is appointed to be read," the Table of Proper Lessons, and the Table of daily First and Second Lessons contained in the second part of the schedule to this Act shall be substituted Substitution of Tables of Lessons in schedule for old tables.

for the following parts of the Book of Common Prayer of the Church of England respectively; that is to say,

1. The said directions for the directions respecting "the order how the rest of Holy Scripture is appointed to be read," set out in the first part of the said Schedule;
2. The said Table of Proper Lessons for the Table of Proper Lessons to be read at Morning and Evening Prayer on the Sundays and other Holy-days throughout the year ;"
3. The said Table of daily First and Second Lessons for the corresponding portion of the Table of daily First and Second Lessons contained in the "Calendar with the Table of Lessons ;"

and all Acts relating to the Book of Common Prayer of the Church of England shall be construed to refer to such book as altered by this Act, and after the first day of October one thousand eight hundred and seventy-one the directions and Tables of Lessons contained in the second part of the schedule to this Act shall be printed and published in all editions of the said Book of Common Prayer, and (so far as necessary) of the said Acts in lieu of the directions and Tables of Lessons for which they are by this Act substituted: provided that the Table of Lessons hitherto in legal use may at any time prior to the first of January one thousand eight hundred and seventy-nine be followed in lieu of the table hereby substituted therefor; and provided that the occasions whereon power to alter the appointed Psalms and Lessons is, by the schedule to this Act committed to the ordinary, shall be all occasions whereon the ordinary shall judge that such alteration will conduce to edification.

Old tables may be used until 1st Jan. 1879.

Proviso respecting power to alter appointed psalms and lessons.



CHAPTER III.

THE INJUNCTIONS AND ADVERTISEMENTS.

INJUNCTIONS OF EDWARD VI.

*Injunctions given by the most excellent prince, Edward VI., by the grace of God king of England, France, and Ireland, defender of the faith, and in earth, under Christ, of the church of England and of Ireland the supreme head. To all and singular his loving subjects, as well of the clergy as of the laity.—(Bodl. Douce, BB. 218.)*

**T**HE king's most royal majesty, by the advice of his most dear uncle the duke of Somerset, lord protector of all his realms, dominions, and subjects, and governor of his most royal person, and the residue of his most honourable council, intending the advancement of the true honour of Almighty God, the suppression of idolatry and superstition throughout all his realms and dominions, and to plant true religion, to the extirpation of all hypocrisy, enormities, and abuses, as to his duty appertaineth; hath ministered unto his loving subjects these godly injunctions hereafter following; whereof part were given unto them heretofore, by the authority of his most dearly beloved father, King Henry VIII., of most famous memory, and part are now ministered and given by his majesty: all which injunctions his highness willeth and commandeth his said loving subjects, by his supreme authority, obediently to receive, and truly to observe and keep, every man in his offices, degrees, and states, as they will avoid his displeasure, and the pains in the same injunctions hereafter expressed.

The first is, that all deans, archdeacons, parsons, vicars, and other ecclesiastical persons, shall faithfully keep and observe, and as far as in them may lie, shall cause to be observed and kept of

other, all and singular laws and statutes, made as well for the abolishing and extirpation of the bishop of Rome his pretended usurped power and jurisdiction, as for the establishment and confirmation of the king's authority, jurisdiction, and supremacy of the church of England and Ireland. And furthermore, all ecclesiastical persons, having cure of soul, shall, to the uttermost of their wisdom, knowledge, and learning, purely, sincerely, and without any colour or dissimulation, declare, manifest and open four times every year at the least, in their sermons and other collations, that the Bishop of Rome's usurped power and jurisdiction, having no establishment nor ground by the laws of God, was of most just causes taken away and abolished; and that therefore no manner of obedience or subjection, within his realms and dominions, is due unto him. And that the king's power, within his realms and dominions, is the highest power under God, to whom all men, within the same realms and dominions, by God's laws, owe most loyalty and obedience afore and above all other powers and potentates in earth.

Besides this, to the intent that all superstition and hypocrisy crept into divers men's hearts, may vanish away; they shall not set forth or extol any images, relics, or miracles, for any superstition or lucre, nor allure the people by any enticements to the pilgrimage of any saint or image: but reproving the same, they shall teach, that all goodness, health, and grace, ought to be both asked and looked for only of God, as of the very author and giver of the same, and of none other.

2. Item, That they the persons above rehearsed, shall make cause to be made in their churches, and every other cure they have, one sermon every quarter of the year at the least, where they shall purely and sincerely declare the Word of God: and the same, exhort their hearers to the works of faith, mercy and charity, specially prescribed and commanded in scripture; and the works devised by men's fantasies, besides scripture, as wandering to pilgrimages, offering of money, candles, or tables, to relics, images, or kissing and licking of the same, praying upon beads, such like superstition, have not only no promise of reward in scripture for doing of them, but contrariwise, great threats, and maledictions of God, for that they be things tending to idolatry and superstition, which of all other offences God Almighty doth most detest and abhor, for that the same diminish most his honour and glory.

3. Item, That such images as they know in any of their cures



or have been so abused with pilgrimage or offerings of any thing made thereunto, or shall be hereafter censured unto, they (and none other private persons) shall for the avoiding of that most detestable offence of idolatry, forthwith take down, or cause to be taken down and destroy the same; and shall suffer from henceforth no torches or candles, tapers or images of wax to be set afore any image or picture, but only two lights upon the high altar, before the sacrament, which for the signification that Christ is the very true light of the world, they shall suffer to remain still; admonishing their parishioners, that images serve for no other purpose but to be a remembrance, whereby men may be admonished of the holy lives and conversation of them that the said images do represent; which images if they do abuse for any other intent, they commit idolatry the same, to the great danger of their souls.

4. Item, That every holy-day throughout the year, when they have no sermon, they shall immediately after the Gospel, openly and plainly recite to their parishioners in the pulpit, the "Pater noster," the "Credo," and the Ten Commandments in English, to the intent the people may learn the same by heart; exhorting all parents and householders to teach their children and servants the same, as they are bound by the law of God, and in conscience to do.

5. Item, That they shall charge fathers and mothers, masters and governors, to bestow their children and servants, even from their childhood, either to learning or to some honest exercise, occupation, or husbandry; exhorting and counselling, and by all the ways and means they may, as well in their sermons and collations, as otherwise, persuading their said fathers and mothers, masters and other governors, diligently to provide and foresee that the youth be in no manner of wise brought up in idleness, lest at any time afterward for lack of some craft, occupation, or other honest means to live by, they be driven to fall to begging, stealing, or some other unthriftiness; forasmuch as we may daily see, through sloth and idleness, divers valiant men fall, some to begging, and some to theft and murder; which after brought to calamity and misery, do blame their parents, friends, and governors, which suffered them to be brought up so idly in their youth, where if they had been well brought up in learning some good occupation or craft, they would (being rulers of their own household) have profited as well themselves, as divers other persons, to the great commodity and ornament of the commonwealth.

6. Also, That the said parsons, vicars, and other curates shall diligently provide, that the sacraments be duly and reverently ministered in their parishes. And if at any time it happen them in any of the cases expressed in the statutes of this realm, or of special license given by the king's majesty, to be absent from their benefices, they shall leave their cure not to a rude and unlearned person, but to an honest, well learned, and expert curate, that can by his ability teach the rude and unlearned of their cure wholesome doctrine, and reduce them to the right way that do err; which will also execute these injunctions, and do their duty otherwise, as they are bound to do in every behalf, and accordingly may and will profit their cure no less with good example of living, than with the declaration of the Word of God, or else their lack and default shall be imputed unto them, who shall straitly answer for the same if they do otherwise. And always let them see, that neither they nor their curates do seek more their own profit, promotion, or advantage, than the profit of the souls that they have under their cure, or the glory of God.

7. Also, That they shall provide within three months next after this visitation, one book of the whole Bible, of the largest volume in English. And within one twelve months next after the said visitation, the "Paraphrasis" of Erasmus also in English upon the Gospels, and the same set up in some convenient place within the said church that they have cure of, whereas their parishioners may most commodiously resort unto the same, and read the same. The charges of which books shall be rateably borne between the parson or proprietary, and the parishioners aforesaid, that is to say, the one half by the parson or proprietary, and the other half by the parishioners. And they shall discourage no man (authorized and licensed thereto) from the reading of any part of the Bible, either in Latin or in English; but shall rather conform and exhort every person to read the same, as the very lively Word of God, and the special food of man's soul, that all Christian persons are bound to embrace, believe, and follow, if they look to be saved: whereby they may the better know their duties to God, to their sovereign lord the king, and their neighbour; ever gently and charitably exhorting them, and in his majesty's name straitly charging and commanding them, that in the reading thereof, no man to reason or contend, but quietly to hear the reader.

8. Also, The said ecclesiastical persons shall in no wise, at any unlawful time, nor for any other cause than for their hones

necessity, haunt or resort to any taverns or alehouses. And after their dinner and supper, they shall not give themselves to drinking or riot, spending their time idly, by day or by night, at dice, cards, or tables-playing, or any other unlawful game; but at all times (as they shall have leisure) they shall hear and read somewhat of holy scripture, or shall occupy themselves with some other honest exercise; and that they always do the things which appertain to honesty, with endeavour to profit the commonweal; having always in mind, that they ought to excel all other in purity of life, and should be example to the people to live well and Christianly.

9. Item, That they shall in confessions every Lent examine every person that cometh to confession to them, whether they can recite the articles of their faith, the "Pater noster," and the Ten Commandments in English, and hear them say the same particularly; wherein if they be not perfect, they shall declare then, that every Christian person ought to know the said things before they should receive the blessed Sacrament of the altar, and monish them to learn the said necessary things more perfectly, or else they ought not to presume to come to God's board, without perfect knowledge and will to observe the same; and if they do, it is to the great peril of their souls, and also to the worldly rebuke, that they might incur hereafter by the same.

10. Also, That they shall admit no man to preach within any their cures, but such as shall appear unto them to be sufficiently licensed thereunto, by the king's majesty, the lord protector's grace, the Archbishop of Canterbury, the Archbishop of York in his province, or the bishop of the diocess; and such as shall be so licensed, they shall gladly receive to declare the Word of God, without any resistance or contradiction.

11. Also, If they have heretofore declared to their parishioners any thing to the extolling or setting forth of pilgrimages, relics, or images, or lighting of candles, kissing, kneeling, decking of the same images, or any such superstition, they shall now openly, before the same, recant, and reprove the same; showing them (as the truth is) that they did the same upon no ground of scripture, but were led and seduced by a common error and abuse, crept into the Church through the sufferance and avarice of such as felt profit by the same.

12. Also, If they do, or shall know any man within their parish or elsewhere, that is a letter of the Word of God to be read in English, or sincerely preached, or of the execution of these the



king's majesty's injunctions, or a fautor of the Bishop of Rome's pretended power, now by the laws of this realm justly rejected, extirped, and taken away utterly, they shall detect and present the same to the king or his council, or to the justice of peace next adjoining.

13. Also, That the parson, vicar, or curate, and parishioners of every parish within this realm, shall, in their churches and chapels, keep one book or register, wherein they shall write the day and year of every wedding, christening, and burial, made within their parish for their time, and so every man succeeding them likewise; and also therein shall write every person's name that shall be so wedded, christened, or buried. And for the safe keeping of the same book, the parish shall be bound to provide of their common charges, one sure coffer with two locks and keys, whereof the one to remain with the parson, vicar, or curate, and the other with the wardens of every parish church or chapel, wherein the said book shall be laid up; which book they shall every Sunday take forth, and in the presence of the said wardens, or one of them, write and record in the same, all the weddings, christenings, and burials, made the whole week before; and that done, to lay up the book in the said coffer, as before. And for every time that the same shall be omitted, the party that shall be in the fault thereof, shall forfeit to the said church 3s. 4d. to be employed to the poor men's box of that parish.

14. Furthermore, because the goods of the Church are called the goods of the poor, and at these days nothing is less seen than the poor to be sustained with the same; all parsons, vicars, pensionaries, prebendaries, and other beneficed men within this deanery, not being resident upon their benefices which may dispend yearly £20, or above, either within this deanery or elsewhere, shall distribute hereafter among their poor parishioners, or other inhabitants there, in the presence of the churchwardens, or some other honest men of the parish, the fortieth part of the fruits and revenues of their said benefices, lest they be worthily noted of ingratitude, which reserving so many parts to themselves, cannot vouchsafe to impart the fortieth portion thereof among the poor people of that parish, that is so fruitful and profitable unto them.

15. And to the intent that learned men may hereafter spring the more, for the execution of the premises, every parson, vicar, clerk, or beneficed man within this deanery, having yearly to dispend in benefices and other promotions of the Church £100 shall give



competent exhibition to one scholar ; and for as many £100 more as he may dispend, to so many scholars more shall give like exhibition in the university of Oxford or Cambridge, or some grammar-school ; which after they have profited in good learning, may be partners of their patron's cure and charge, as well in preaching, as otherwise, in the execution of their offices, or may (when need shall be) otherwise profit the commonweal with their counsel and wisdom.

16. Also, That the proprietaries, parsons, vicars, and clerks, having churches, chapels, or mansions within this deanery, shall bestow yearly hereafter upon the same mansions or chancels of their churches being in decay, the fifth part of that their benefices, till they be fully repaired ; and the same so repaired, shall always keep and maintain in good estate.

17. Also, That the said parsons, vicars, and clerks, shall, once every quarter of the year, read these injunctions given unto them, openly and deliberately, before all their parishioners, to the intent that both may be the better admonished of their duty, and their said parishioners the more moved to follow the same for their part.

18. Also, Forasmuch as by a law established, every man is bound to pay his tithes, no man shall by colour of duty omitted by their curates, detain their tithes, and so redub and requite one wrong with another, or be his own judge, but shall truly pay the same, as he hath been accustomed, to their parsons, vicars, and curates, without any restraint or diminution. And such lack and default as they can justly find in their parsons and curates, to call for reformation thereof at their ordinaries' and other superiors' hands, who, upon complaint and due proof thereof, shall reform the same accordingly.

19. Also, That no person shall from henceforth alter or change the order and manner of any fasting-day that is commanded, nor of common prayer or Divine service, otherwise than is specified in these injunctions, until such time as the same shall be otherwise ordered and transposed by the king's authority.

20. Also, That every parson, vicar, curate, chantry-priest, and stipendiary, being under the degree of bachelor of divinity, shall provide and have of his own, within three months after this visitation, the New Testament both in Latin and in English, with Paraphrasis upon the same of Erasmus, and diligently study the same, conferring the one with the other. And the bishops and other

ordinaries by themselves or their officers, in their synods and visitations, shall examine the said ecclesiastical persons how they have profited in the study of holy scripture.

21. Also, In the time of high mass within every church, he that saith or singeth the same, shall read or cause to be read the Epistle and Gospel of that mass in English and not in Latin, in the pulpit, or in such convenient place as the people may hear the same. And also every Sunday and holy-day they shall plainly and distinctly read, or cause to be read, one chapter of the New Testament in English, in the said place at matins immediately after the lessons; and at evensong, after "Magnificat," one chapter of the Old Testament. And to the intent the premises may be more conveniently done, the king's majesty's pleasure is, that when nine lessons should be read in the church, three of them shall be omitted and left out with their responds; and at evensong time the responds with all the memories shall be left off for that purpose.

22. Also, Because those persons, which be sick and in peril of death, be oftentimes put in despair, by the craft and subtilty of the devil, who is then most busy, and especially with them that lack the knowledge, sure persuasion, and steadfast belief, that they may be made partakers of the great and infinite mercy, which Almighty God of his most bountiful goodness, and mere liberality, without our deserving, hath offered freely to all persons, that put their full trust and confidence in him; therefore that this damnable vice of despair may be clearly taken away, and firm belief, and steadfast hope, surely conceived of all their parishioners, being in any danger, they shall learn and have always in a readiness such comfortable places and sentences of scripture, as do set forth the mercy, benefits, and goodness of Almighty God towards all penitent and believing persons, that they may at all times (when necessity shall require) promptly comfort their flock, with the lively Word of God, which is the only stay of man's conscience.

23. Also, To avoid all contention and strife, which heretofore hath risen among the king's majesty's subjects in sundry places of his realms and dominions, by reason of fond courtesy, and challenging of places in procession, and also that they may the more quietly hear that which is said or sung to their edifying, they shall not from henceforth, in any parish church at any time, use any procession about the church or churchyard, or other place, but immediately before high mass, the priests with other of the quire shall kneel in the midst of the church, and sing or say plainly and

distinctly the litany which is set forth in English, with all the suffrages following, and none other procession or litany to be had or used but the said litany in English, adding nothing thereto, but as the king's grace shall hereafter appoint ; and in cathedral or collegiate churches, the same shall be done in such places as our commissaries in our visitation shall appoint. And in the time of the litany, of the high mass, of the sermon, and when the priest readeth the scripture to the parishioners, no manner of persons without a just and urgent cause, shall depart out of the church ; and all ringing and knolling of bells shall be utterly forborne at that time, except one bell in convenient time to be rung or knolled before the sermon.

24. Also, Like as the people be commonly occupied on the work-day, with bodily labour, for their bodily sustenance, so was the holy-day at the first beginning godly instituted and ordained, that the people should that day give themselves wholly to God. And whereas in our time, God is more offended than pleased, more dishonoured than honoured upon the holy-day, because of idleness, pride, drunkenness, quarrelling and brawling, which are most used in such days, people nevertheless persuading themselves sufficiently to honour God on that day, if they hear mass and service, though they understand nothing to their edifying ; therefore all the king's faithful and loving subjects shall from henceforth celebrate and keep their holy-day according to God's holy will and pleasure ; that is, in hearing the Word of God read and taught ; in private and public prayers ; in acknowledging their offences to God, and amendment of the same ; in reconciling themselves charitably to their neighbours, where displeasure hath been ; in oftentimes receiving the communion of the very body and blood of Christ ; in visiting of the poor and sick ; in using all soberness and godly conversation. Yet notwithstanding, all parsons, vicars, and curates shall teach and declare unto their parishioners, that they may with a safe and quiet conscience, in the time of harvest, labour upon the holy and festival days, and save that thing which God hath sent. And if for any scrupulosity, or grudge of conscience, men should superstitiously abstain from working upon those days, that then they should grievously offend and displease God.

25. Also, Forasmuch as variance and contention is a thing which most displeaseth God, and is most contrary to the blessed communion of the body and blood of our Saviour Christ ; curates shall in nowise admit to the receiving thereof any of their cure and



flock, who hath maliciously and openly contended with his neighbour, unless the same do first charitably and openly reconcile himself again, remitting all rancour and malice, whatsoever controversy hath been between them; and nevertheless their just titles and rights they may charitably prosecute before such as have authority to hear the same.

26. Also, That every dean, archdeacon, master of collegiate church, master of hospital, and prebendary being priest, shall preach by himself personally twice every year at the least, either in the place where he is intituled, or in some church where he hath jurisdiction, or else which is to the said place appropriate or united.

27. Also, That they shall instruct and teach in their cures, that no man ought obstinately and maliciously to break and violate the laudable ceremonies of the church, by the king commanded to be observed, and as yet not abrogated. And on the other side, that whosoever doth superstitiously abuse them, doth the same to the great peril and danger of his soul's health; as in casting holy water upon his bed, upon images, and other dead things, or bearing about him holy bread, or St. John's Gospel, or making crosses of wood upon Palm-Sunday, in time of reading of the passion, or keeping of private holy-days, as bakers, brewers, smiths, shoemakers, and such other do; or ringing of the holy bells; or blessing with the holy candle, to the intent thereby to be discharged of the burden of sin, or to drive away devils, or to put away dreams and phantasies, or in putting trust and confidence of health and salvation in the same ceremonies, when they be only ordained, instituted, and made, to put us in remembrance of the benefits which we have received by Christ. And if he use them for any other purpose, he grievously offendeth God.

28. Also, That they shall take away, utterly extinct and destroy all shrines, covering of shrines, all tables, candlesticks, trindles or rolls of wax, pictures, paintings, and all other monuments of feigned miracles, pilgrimages, idolatry, and superstition; so that there remain no memory of the same in walls, glass windows, or elsewhere within their churches or houses. And they shall exhort all their parishioners to do the like, within their several houses. And that the churchwardens, at the common charge of the parishioners in every church, shall provide a comely and honest pulpit, to be set in a convenient place within the same, for the preaching of God's Word.



29. Also, They shall provide and have within three months after this visitation, a strong chest with a hole in the upper part thereof, to be provided at the cost and charge of the parish, having three keys, whereof one shall remain in the custody of the parson, vicar, or curate, and the other two in the custody of the churchwardens, or any other two honest men, to be appointed by the parish from year to year. Which chest you shall set and fasten near unto the high altar, to the intent the parishioners should put into it their oblation and alms for their poor neighbours. And the parson, vicar, and curate shall diligently from time to time, and specially when men make their testaments, call upon, exhort and move their neighbours to confer and give, as they may well spare, to the said chest; declaring unto them, whereas heretofore they have been diligent to bestow much substance otherwise than God commanded upon pardons, pilgrimages, trentalles, decking of images, offering of candles, giving to friars, and upon other like blind devotions, they ought at this time to be much more ready to help the poor and needy, knowing that to relieve the poor is a true worshipping of God, required earnestly upon pain of everlasting damnation; and that also, whatsoever is given for their comfort, is given to Christ Himself and so is accepted of Him, that He will mercifully reward the same with everlasting life; the which alms and devotion of the people, the keepers of the keys shall at times convenient take out of the chest, and distribute the same in the presence of the whole parish, or six of them, to be truly and faithfully delivered to their most needy neighbours; and if they be provided for, then to the reparation of high ways next adjoining. And also the money which riseth of fraternities, guilds, and other stocks of the Church (except by the king's majesty's authority it be otherwise appointed) shall be put into the said chest, and converted to the said use, and also the rents of lands, the profit of cattle, and money given or bequeathed to the finding of torches, lights, tapers, and lamps, shall be converted to the said use, saving that it shall be lawful for them to bestow part of the said profits upon the reparation of the church, if great need require, and whereas the parish is very poor, and not able otherwise to repair the same.

30. And forasmuch as priests be public ministers of the church, and upon the holy-days ought to apply themselves to the common administration of the whole parish, they shall not be bound to go to women lying in child-bed, except in time of dangerous sickness, and not to fetch any corse before it be brought to the churchyard;

and if the woman be sick, or the corse brought to the church, the priest shall do his duty accordingly in visiting the woman, and burying the dead person.

31. Also, To avoid the detestable sin of simony, because buying and selling of benefices is execrable before God; therefore all such persons as buy any benefices, or come to them by fraud or deceit, shall be deprived of such benefices, and be made unable at any time after to receive any other spiritual promotion. And such as do sell them, or by any colour do bestow them for their own gain and profit, shall lose their right and title of patronage, and presentment for that time, and the gift thereof for that vacation shall appertain to the king's majesty.

32. Also, Because through lack of preachers in many places of the king's realms and dominions, the people continue in ignorance and blindness, all parsons, vicars, and curates shall read in their churches every Sunday one of the homilies, which are and shall be set forth for the same purpose by the king's authority, in such sort as they shall be appointed to do in the preface of the same.

33. Also, Whereas many indiscreet persons do at this day uncharitably condemn and abuse priests and ministers of the Church, because some of them (having small learning) have of long time favoured phantasies rather than God's truth; yet forasmuch as their office and function is appointed of God, the king's majesty willeth and chargeth all his loving subjects, that from henceforth they shall use them charitably and reverently for their office and ministration sake, and especially all such as labour in the setting forth of God's Holy Word.

34. Also, That all manner of persons which understand not the Latin tongue, shall pray upon none other primer, but upon that which was lately set forth in English by the authority of King Henry VIII. of most famous memory. And that no teacher of youth shall teach any other than the said primer. And all those which have knowledge of the Latin tongue, shall pray upon none other Latin primer, but upon that which is likewise set forth by the said authority. And that all graces to be said at dinner and supper, shall be always said in the English tongue. And that none other grammar shall be taught in any school or other place within the king's realms and dominions, but only that which is set forth by the said authority.

35. Item, That all chantry priests shall exercise themselves in teaching youth to read and write, and bringing them up in good manners, and other virtuous exercises.

36. Item, When any sermon or homily shall be had, the prime and hours shall be omitted.

*The form of bidding the common-prayers.*

You shall pray for the whole congregation of Christ's church; and specially for this Church of England and Ireland; wherein first commend to your devout prayers, the king's most excellent majesty, supreme head immediately under God of the spirituality and temporality of the same Church; and for Queen Katherine Dowager, and also for my Lady Mary, and my Lady Elizabeth, the king's sisters.

Secondly, you shall pray for my lord protector's grace, with all the rest of the king's majesty's council: for all the lords of this realm, and for the clergy and the commons of the same; beseeching Almighty God to give every of them in his degree, grace to use themselves in such wise, as may be to God's glory, the king's honour, and the weal of this realm.

Thirdly, you shall pray for all them that be departed out of this world in the faith of Christ, that they with us, and we with them at the day of judgment, may rest both body and soul, with Abraham, Isaac, and Jacob in the kingdom of heaven.

All which and singular injunctions the king's majesty ministereth unto his clergy and their successors, and to all other his loving subjects; straitly charging and commanding them to observe and keep the same upon pain of deprivation, sequestration of fruits of benefices, suspension, excommunication, and such other coercion, as to ordinaries, or other having ecclesiastical jurisdiction, whom his majesty hath appointed for the due execution of the same, shall be seen convenient; charging and commanding them to see these injunctions observed and kept of all persons, being under their jurisdiction, as they will answer to his majesty for the contrary; and his majesty's pleasure is, that every justice of peace (being required) shall assist the ordinaries and every of them for the due execution of the said injunctions.



*Injunctions of Elizabeth.*

*Injunctions given by the queen's majesty, concerning both the clergy and laity of this realm, published anno Domini MDLIX. being the first year of the reign of our sovereign lady queen Elizabeth. (Bodl. 4to I. 2. Th. Seld.)*



HE queen's most royal majesty, by the advice of her most honourable council, intending the advancement of the true honour of Almighty God, the suppression of superstition through all her highness's realms and dominions, and to plant true religion to the extirpation of all hypocrisy, enormities, and abuses (as to her duty appertaineth), doth minister unto her loving subjects these godly injunctions hereafter following. All which injunctions her highness willeth and commandeth her loving subjects obediently to receive, and truly to observe and keep, every man in their offices, degrees, and states, as they will avoid her highness's displeasure, and the pains of the same hereafter expressed.

1. The first is, That all deans, archdeacons, parsons, vicars, and all other ecclesiastical persons shall faithfully keep and observe, and as far as in them may lie, shall cause to be observed and kept of other, all and singular laws and statutes made for the restoring to the crown the ancient jurisdiction over the state ecclesiastical, and abolishing of all foreign power, repugnant to the same. And furthermore, All ecclesiastical persons having cure of souls, shall, to the uttermost of their wit, knowledge, and learning, purely and sincerely, and without any colour or dissimulation, declare, manifest and open four times every year at the least, in their sermons and other collations, that all usurped and foreign power, having no establishment nor ground by the law of God, is, for most just causes, taken away and abolished; and that therefore no manner of obedience and subjection within her highness's realms and dominions is due unto any such foreign power. And, that the queen's power within her realms and dominions is the highest power under God, to whom all men, within the same realms and dominions, by God's laws, owe most loyalty and obedience, afore and above all other powers and potentates in earth.

2. Besides this, to the intent that all superstition and hypocrisy crept into divers men's hearts, may vanish away, they shall not set forth or extol the dignity of any images, relics, or miracles; but



declaring the abuse of the same, they shall teach, that all goodness, health and grace ought to be both asked and looked for only of God, as of the very Author and Giver of the same, and of none other.

3. Item, That they, the parsons above rehearsed, shall preach in their churches, and every other cure they have, one sermon every month of the year at the least, wherein they shall purely and sincerely declare the Word of God, and in the same exhort their hearers to the works of faith, as mercy and charity, specially prescribed and commanded in scripture; and that the works devised by man's fantasies, besides scripture (as wandering of pilgrimages, setting up of candles, praying upon beads, or such like superstition), have not only no promise of reward of scripture for doing of them, but contrariwise great threatenings and maledictions of God, for that they be things tending to idolatry and superstition, which of all other offences God Almighty doth most detest and abhor, for that the same diminish most his honour and glory.

4. Item, That they, the parsons above rehearsed, shall preach in their own persons, once in every quarter of the year at the least, one sermon, being licensed specially thereunto, as is specified hereafter; or else shall read some homily prescribed to be used by the queen's authority every Sunday at the least, unless some other preacher sufficiently licensed, as hereafter, chance to come to the parish for the same purpose of preaching.

5. Item, That every holy-day through the year, when they have no sermon, they shall immediately after the Gospel openly and plainly recite to their parishioners in the pulpit the "Pater noster," the "Creed," and the "Ten Commandments," in English, to the intent, the people may learn the same by heart; exhorting all parents and householders to teach their children and servants the same, as they are bound by the law of God and conscience to do.

6. Also, That they shall provide within three months next after his visitation, at the charges of the parish, one book of the whole Bible of the largest volume in English; and within one twelve months next after the said visitation, the Paraphrases of Erasmus also in English upon the Gospels, and the same set up in some convenient place within the said church, that they have cure of, whereas their parishioners may most commodiously resort unto the same, and read the same, out of the time of common service. The charges of the Paraphrases shall be by the parson or proprietary and parishioners borne by equal portions; and they shall dis-

courage no man from the reading of any part of the Bible, either in Latin or in English, but shall rather exhort every person to read the same with great humility and reverence, as the very lively Word of God, and the special food of man's soul, which all Christian persons are bound to embrace, believe, and follow, if they look to be saved; whereby they may the better know their duties to God, to their sovereign lady the queen, and their neighbour; ever gently and charitably exhorting them, and in her majesty's name straitly charging and commanding them, that in the reading thereof, no man to reason or contend, but quietly to hear the reader.

7. Also, the said ecclesiastical persons shall in no wise at any unlawful time, nor for any other cause, than for their honest necessities, haunt or resort to any taverns or alehouses. And after their meats, they shall not give themselves to drinking or riot, spending their time idly by day or by night at dice, cards, or tables playing, or any other unlawful game; but at all times, as they shall have leisure, they shall hear or read somewhat of holy scripture, or shall occupy themselves with some other honest study, or exercise; and that they always do the things which appertain to honesty, and endeavour to profit the commonwealth; having always in mind that they ought to excel all other in purity of life, and should be examples to the people to live well and christianly.

8. Also, That they shall admit no man to preach within any of their cures, but such as shall appear unto them to be sufficiently licensed thereunto by the queen's majesty, or the Archbishop of Canterbury or the Archbishop of York, in either their provinces, or the bishop of the diocese, or by the queen's majesty's visitors. And such as shall be so licensed, they shall gladly receive to declare the Word of God at convenient times, without any resistance or contradiction. And that no other be suffered to preach out of his own cure or parish, than such as shall be licensed, as is above expressed.

9. Also, If they do or shall know any man within their parish or elsewhere, that is a letter of the Word of God to be read in English, or sincerely preached, or of the execution of these the queen's majesty's injunctions, or a fautor of any usurped and foreign power, now by the laws of this realm justly rejected and taken away, they shall detect and present the same to the queen's majesty, or to her council, or to the ordinary, or to the justice of peace next adjoining.

10. Also, That the parson, vicar, or curate, and parishioners of every parish within this realm, shall in their churches and chapels keep one book of register, wherein they shall write the day and year of every wedding, christening, and burial made within the parish for their time, and so every man succeeding them likewise; and also therein shall write every person's name that shall be so wedded, christened, and buried. And for the safe keeping of the same book, the parish shall be bound to provide of their common charges one sure coffer, with two locks and keys, whereof the one to remain with the parson, vicar, or curate, and the other with the wardens of every parish church or chapel, wherein the said book shall be laid up. Which book they shall every Sunday take forth, and in the presence of the said wardens, or one of them, write and record in the same all the weddings, christenings, and burials, made the whole week before; and that done, to lay up the book in the said coffer as before; and for every time that the same shall be omitted, the party that shall be in the fault thereof shall forfeit to the said church 3s. 4d., to be employed, the one half to the poor men's box of that parish, the other half towards the repairing of the church.

11. Furthermore, because the goods of the church are called the goods of the poor, and at these days nothing is less seen, than the poor to be sustained with the same; all parsons, vicars, pensionaries, prebendaries, and other beneficed men within this deanery, not being resident upon their benefices, which may dispend yearly twenty pounds or above, either within this deanery, or elsewhere, shall distribute hereafter among their poor parishioners, or other inhabitants there, in the presence of the churchwardens, or some other honest men of the parish, the fortieth part of the fruits and revenues of the said benefice; lest they be worthily noted of ingratitude, which reserving so many parts to themselves, cannot be so safe to impart the fortieth portion thereof among the poor people of that parish, that is so fruitful and profitable unto them.

12. And, to the intent that learned men may hereafter spring the more, for the execution of the premises, every parson, vicar, clerk, or beneficed man within this deanery, having yearly to dispend in benefices and other promotions of the church an hundred pounds, shall give £3 6s. 8d. in exhibition to one scholar in any of the universities; and for as many £100 more as he may dispend, so many scholars more shall give like exhibition in the university of Oxford or Cambridge, or some grammar-school, which, after



they have profited in good learning, may be partners of their patron's cure and charge, as well in preaching, as otherwise in executing of their offices, or may, when time shall be, otherwise profit the commonweal with their counsel and wisdom.

13. Also, That all proprietaries, parsons, vicars, and clerks, having churches, chapels, or mansions within this deanery, shall bestow yearly hereafter upon the same mansions, or chancels of their churches, being in decay, the fifth part of that their benefices, till they be fully repaired, and shall always keep and maintain in good estate.

14. Also, That the said parsons, vicars, and clerks, shall once every quarter of the year read these injunctions given unto them, openly and deliberately before all their parishioners at one time, or at two several times in one day, to the intent, that both they may be the better admonished of their duty, and their said parishioners the more moved to follow the same for their part.

15. Also, Forasmuch as by laws established, every man is bound to pay his tithes, no man shall by colour of duty omitted by their curates, detain their tithes and so requite one wrong with another, or be his own judge; but shall truly pay the same, as hath been accustomed, to their parsons, vicars, and curates, without any restraint or diminution; and such lack and default as they can justly find in their parsons and curates, to call for reformation thereof at their ordinaries, and other superiors, who, upon complaint and due proof thereof, shall reform the same accordingly.

16. Also, That every parson, vicar, curate, and stipendiary priest, being under the degree of a master of arts, shall provide and have of his own, within three months after this visitation, the New Testament both in Latin and in English, with paraphrases upon the same, conferring the one with the other. And the bishops and other ordinaries by themselves or their officers, in their synods and visitations, shall examine the said ecclesiastical persons, how they have profited in the study of holy scripture.

17. Also, That the vice of damnable despair may be clearly taken away, and that firm belief and steadfast hope may be surely conceived of all their parishioners, being in any danger; they shall learn and have always in a readiness such comfortable places and sentences of scripture, as do set forth the mercy, benefits, and goodness of Almighty God towards all penitent and believing persons; that they may at all times, when necessity shall require, promptly comfort their flock with the lively Word of God, which is the only stay of man's conscience.



18. Also, To avoid all contention and strife, which heretofore hath risen among the queen's majesty's subjects in sundry places of her realms and dominions, by reason of fond courtesy, and challenging of places in procession; and also that they may the more quietly hear that, which is said or sung to their edifying, they shall not from henceforth in any parish church at any time use any procession about the church or churchyard, or other place; but immediately before the time of communion of the sacrament, the priests with other of the choir shall kneel in the midst of the church, and sing or say plainly and distinctly the litany, which is set forth in English, with all the suffrages following, to the intent the people may hear and answer; and none other procession or litany to be had or used, but the said litany in English, adding nothing thereto, but as it is now appointed. And in cathedral or collegiate churches the same shall be done in such places, and in such sort, as our commissioners in our visitation shall appoint. And in the time of the litany, of the common prayer, of the sermon, and when the priest readeth the scripture to the parishioners, no manner of persons, without a just and urgent cause, shall use any walking in the church, nor shall depart out of the church; and all ringing and knolling of bells shall be utterly forborne for that time, except one bell in convenient time to be rung or knolled before the sermon. But yet for the retaining of the perambulation of the circuits of parishes, they shall once in the year at the time accustomed, with the curate and the substantial men of the parish, walk about their parishes, as they were accustomed, and at their return to the church, make their common prayers.

19. Provided, That the curate in their said common perambulations, used heretofore in the days of rogations, at certain convenient places shall admonish the people to give thanks to God, in the beholding of God's benefits, for the increase and abundance of his fruits upon the face of the earth, with the saying of the 103rd psalm, "Benedic anima mea," &c., or such like. At which time also the same minister shall inculcate these or such sentences: "Cursed be he, which translateth the bounds and doles of his neighbour." Or such other order of prayers, as shall be hereafter appointed.

20. Item, All the queen's faithful and loving subjects shall from henceforth celebrate and keep their holy-day according to God's holy will and pleasure; that is, in hearing the Word of God read

and taught, in private and public prayers, in acknowledging their offences to God, and amendment of the same, in reconciling themselves charitably to their neighbours, where displeasure hath been, in oftentimes receiving the communion of the very body and blood of Christ, in visiting of the poor and sick, using all soberness and godly conversation. Yet notwithstanding, all parsons, vicars, and curates, shall teach and declare unto their parishioners, that they may with a safe and quiet conscience, after their common prayer in the time of harvest, labour upon the holy and festival days, and save that thing which God hath sent; and if for any scrupulosity or grudge of conscience, men should superstitiously abstain from working upon those days, that then they should grievously offend and displease God.

21. Also, Forasmuch as variance and contention is a thing that most displeaseth God, and is most contrary to the blessed communion of the body and blood of our Saviour Christ, curates shall in no wise admit to the receiving thereof any of their cure and flock, which be openly known to live in sin notorious without repentance, or who hath maliciously and openly contended with his neighbour, unless the same do first charitably and openly reconcile himself again, remitting all rancour and malice, whatsoever controversy hath been between them. And nevertheless, their just titles and rights they may charitably prosecute before such as have authority to hear the same.

22. Also, That they shall instruct and teach in their cures, that no man ought obstinately and maliciously to break and violate the laudable ceremonies of the church, commanded by public authority to be observed.

23. Also, That they shall take away, utterly extinct, and destroy all shrines, coverings of shrines, all tables, candlesticks, trindals, and rolls of wax, pictures, paintings, and all other monuments of feigned miracles, pilgrimages, idolatry, and superstition, so that there remain no memory of the same in walls, glass-windows, or elsewhere within their churches and houses; preserving nevertheless, or repairing both the walls and glass-windows; and they shall exhort all their parishioners to do the like within their several houses.

24. And, That the churchwardens, at the common charge of the parishioners, in every church shall provide a comely and honest pulpit, to be set in a convenient place within the same, and to be there seemly kept for the preaching of God's Word.

25. Also, They shall provide and have within three months after this visitation, a strong chest with a hole in the upper part thereof, to be provided at the cost and charge of the parish, having three keys, whereof one shall remain in the custody of the parson, vicar, or curate, and the other two in the custody of the churchwardens, or any other two honest men, to be appointed by the parish from year to year; which chest you shall set and fasten in a most convenient place, to the intent the parishioners should put into it their oblations and alms for their poor neighbours. And the parson, vicar, and curate shall diligently from time to time, and especially when men make their testaments, call upon, exhort, and move their neighbours to confer and give, as they may well spare, to the said chest; declaring unto them, whereas heretofore they have been diligent to bestow much substance, otherwise than God commanded, upon pardons, pilgrimages, trentals, decking of images, offering of candles, giving to friars, and upon other like blind devotions, they ought at this time to be much more ready to help the poor and needy; knowing that to relieve the poor is a true worshipping of God, required earnestly upon pain of everlasting damnation; and that also whatsoever is given for their comfort, is given to Christ Himself, and so is accepted of Him, that He will mercifully reward the same with everlasting life. The which alms and devotion of the people the keepers of the keys shall at times convenient take out of the chest, and distribute the same in the presence of the whole parish, or six of them, to be truly and faithfully delivered to their most needy neighbours; and if they be provided for, then to the reparation of highways next adjoining, or to the poor people of such parishes near, as shall be thought best to the said keepers of the keys. And also the money which riseth of fraternities, guilds, and other stocks of the church (except by the queen's majesty's authority it be otherwise appointed) shall be put in the said chest, and converted to the said use; and also the rents of lands, the profit of cattle, and money given or bequeathed to obits and diriges, and to the finding of torches, lights, tapers, and lamps, shall be converted to the said use; saving that it shall be lawful for them to bestow part of the said profits upon the reparation of the said church, if great need require, and whereas the parish is very poor, and not able otherwise to repair the same.

26. Also, To avoid the detestable sin of simony, because buying and selling of benefices is execrable before God, therefore all such persons, as buy any benefices, or come to them by fraud or deceit,



shall be deprived of such benefices, and be made unable at any time after to receive any other spiritual promotion; and such as do sell them, or by any colour do bestow them for their own gain and profit, shall use their right and title of patronage and presentment for that time, and the gift thereof for that vacation shall appertain to the queen's majesty.

27. Also, Because through lack of preachers in many places of the queen's realms and dominions the people continue in ignorance and blindness, all parsons, vicars, and curates shall read in their churches every Sunday one of the homilies, which are and shall be set forth for the same purpose by the queen's authority, in such sort, as they shall be appointed to do in the preface of the same.

28. Item, Whereas many indiscreet persons do at this day uncharitably contemn and abuse priests and ministers of the church, because some of them (having small learning) have of long time favoured fond fantasies, rather than God's truth; yet forasmuch as their office and function is appointed of God, the queen's majesty willet and chargeth all her loving subjects, that from henceforth they shall use them charitably and reverently for their office and ministration sake, and specially such as labour in the setting forth of God's holy word.

29. Item, Although there be no prohibition by the Word of God, nor any example of the primitive church, but that the priests and ministers of the church may lawfully, for the avoiding of fornication, have an honest and sober wife, and that for the same purpose the same was by Act of Parliament in the time of our dear brother King Edward VI. made lawful, whereupon a great number of the clergy of this realm were then married, and so continue; yet because there hath grown offence, and some slander to the Church by lack of discreet and sober behaviour in many ministers of the Church, both in choosing of their wives, and indiscreet living with them, the remedy whereof is necessary to be sought; it is thought therefore very necessary, that no manner of priest or deacon shall hereafter take to his wife any manner of woman without the advice and allowance first had upon good examination by the bishop of the same diocese, and two justices of the peace of the same shire, dwelling next to the place, where the same woman hath made her most abode before her marriage; nor without the good will of the parents of the said woman, if she have any living, or two of the next of her kinsfolks, or, for lack of knowledge of such, of her master or mistress, where she serveth. And before he shall be



contracted in any place, he shall make a good and certain proof thereof to the minister, or to the congregation assembled for that purpose, which shall be upon some holy-day, where divers may be present. And if any shall do otherwise, that then they shall not be permitted to minister either the word or the sacraments of the Church, nor shall be capable of any ecclesiastical benefice. And for the manner of marriages of any bishops, the same shall be allowed and approved by the metropolitan of the province, and also by such commissioners, as the queen's majesty shall thereunto appoint. And if any master or dean, or any head of any college shall purpose to marry, the same shall not be allowed, but by such to whom the visitation of the same doth properly belong, who shall in any wise provide that the same tend not to the hindrance of their house.

30. Item, Her majesty being desirous to have the prelacy and clergy of this realm to be had as well in outward reverence, as otherwise regarded for the worthiness of their ministries, and thinking it necessary to have them known to the people in all places and assemblies, both in the church and without, and thereby to receive the honour and estimation due to the special messengers and ministers of Almighty God; willeth and commandeth, that all archbishops and bishops, and all other that be called or admitted to preaching or ministry of the sacraments, or that be admitted into vocation ecclesiastical, or into any society of learning in either of the universities, or elsewhere, shall use and wear such seemly habits, garments, and such square caps, as were most commonly and orderly received in the latter year of the reign of King Edward VI.; not thereby meaning to attribute any holiness or special worthiness to the said garments, but as St. Paul writeth: "*Omnia decenter et secundum ordinem fiant.*" 1 Cor. 14 cap.

31. Item, That no man shall wilfully and obstinately defend or maintain any heresies, errors, or false doctrine, contrary to the faith of Christ and His Holy Spirit.

32. Item, That no persons shall use charms, sorceries, enchantments, witchcraft, soothsaying, or any such like devilish device, nor shall resort at any time to the same for counsel or help.

33. Item, That no persons shall, neglecting their own parish church, resort to any other church in time of common prayer or preaching, except it be by the occasion of some extraordinary sermon in some parish of the same town.

34. Item, That no innholders or alehouse keepers shall use to

sell meat or drink in the time of common prayer, preaching, reading of the homilies or scriptures.

35. Item, That no persons keep in their houses any abused images, tables, pictures, paintings, and other monuments of feigned miracles, pilgrimages, idolatry, and superstition.

36. Item, That no man shall willingly let or disturb the preacher in time of his sermon, or let or discourage any curate or minister to sing or say the Divine service now set forth; nor mock or jest at the ministers of such service.

37. Item, That no man shall talk or reason of the holy scriptures rashly, or contentiously, nor maintain any false doctrine or error, but shall commune of the same, when occasion is given, reverently, humbly, and in the fear of God, for his comfort and better understanding.

38. Item, That no man, woman, or child, shall be otherwise occupied in the time of the service, than in quiet attendance to hear, mark, and understand that is read, preached, and ministered.

39. Item, That every schoolmaster and teacher shall teach the Grammar set forth by King Henry VIII. of noble memory, and continued in the time of King Edward VI. and none other.

40. Item, That no man shall take upon him to teach, but such as shall be allowed by the ordinary, and found meet as well for his learning and dexterity in teaching, as for sober and honest conversation, and also for right understanding of God's true religion.

41. Item, That all teachers of children shall stir and move them to the love and due reverence of God's true religion now truly set forth by public authority.

42. Item, That they shall accustom their scholars reverently to learn such sentences of scriptures, as shall be most expedient to induce them to all godliness.

43. Item, Forasmuch as in these latter days many have been made priests, being children, and otherwise utterly unlearned, so that they could read to say matins or mass; the ordinaries shall not admit any such to any cure or spiritual function.

44. Item, Every parson, vicar, and curate, shall upon every holy-day, and every second Sunday in the year, hear and instruct all the youth of the parish for half-an-hour at the least before evening prayer, in the Ten Commandments, the Articles of the Belief, and in the Lord's Prayer, and diligently examine them, and teach the Catechism set forth in the book of public prayer.

45. Item, That the ordinaries do exhibit unto our visitors their

books, or a true copy of the same, containing the causes, why any person was imprisoned, famished, or put to death for religion.

46. Item, That in every parish three or four discreet men, which tender God's glory, and his true religion, shall be appointed by the ordinaries diligently to see that all the parishioners duly resort to their church upon all Sundays and holy-days, and there to continue the whole time of the godly service ; and all such as shall be found slack or negligent in resorting to the church, having no great nor urgent cause of absence, they shall straitly call upon them, and after due admonition if they amend not, they shall denounce them to the ordinary.

47. Item, That the churchwardens of every parish shall deliver unto our visitors the inventories of vestments, copes, and other ornaments, plate, books, and specially of grails, couchers, legends, processional, hymnals, manuals, portasses, and such like appertaining to the church.

48. Item, That weekly upon Wednesdays and Fridays, not being holy-days, the curate at the accustomed hours of service shall resort to church, and cause warning to be given to the people by knolling of a bell, and say the litany and prayers.

49. Item, Because in divers collegiate, and also some parish churches heretofore there have been livings appointed for the maintenance of men and children to use singing in the church, by means whereof the laudable science of music hath been had in estimation, and preserved in knowledge ; the queen's majesty neither meaning in any wise the decay of any thing, that might conveniently tend to the use and continuance of the said science, neither to have the same in any part so abused in the church, that thereby the common prayer should be the worse understood of the hearers, willeth and commandeth, that first no alteration be made of such assignments of living, as heretofore hath been appointed to the use of singing or music in the church, but that the same so remain. And that there be a modest and distinct song so used in all parts of the common prayers in the church, that the same may be as plainly understood, as if it were read without singing ; and yet nevertheless for the comforting of such that delight in music, it may be permitted, that in the beginning, or in the end of common prayers, either at morning or evening, there may be sung an hymn, or such like song to the praise of Almighty God, in the best sort of melody and music that may be conveniently devised, having respect that the sentence of the hymn may be understood and perceived.



50. Item, Because in all alterations, and specially in rites and ceremonies, there happen discords amongst the people, and there-upon slanderous words and railings; whereby charity, the knot of all Christian society, is loosed; the queen's majesty being most desirous, of all other earthly things, that her people should live in charity both towards God and man, and therein abound in good works, willeth and straitly commandeth all manner her subjects to forbear all vain and contentious disputations in matters of religion, and not to use in despite or rebuke of any person these convicious words, papist or papistical heretic, schismatic or sacramentary, or any such like words of reproach. But if any manner of person shall deserve the accusation of any such, that first he be charitably admonished thereof; and if that shall not amend him, then to denounce the offender to the ordinary, or to some higher power, having authority to correct the same.

51. Item, Because there is a great abuse in the printers of books, which for covetousness chiefly regard not what they print, so they may have gain, whereby ariseth the great disorder by publication of unfruitful, vain, and infamous books and papers; the queen's majesty straitly chargeth and commandeth, that no manner of person shall print any manner of book or paper, of what sort, nature, or in what language soever it be, except the same be first licensed by her majesty by express words in writing, or by six of her privy council; or be perused and licensed by the Archbishops of Canterbury and York, the Bishop of London, the chancellors of both universities, the bishop being ordinary, and the archdeacon also of the place, where any such shall be printed, or by two of them, whereof the ordinary of the place to be always one. And that the names of such, as shall allow the same, to be added in the end of every such work, for a testimony of the allowance thereof. And because many pamphlets, plays, and ballads be oftentimes printed, wherein regard would be had, that nothing therein should be either heretical, seditious, or unseemly for Christian ears; her majesty likewise commandeth that no manner of person shall enterprise to print any such, except the same be to him licensed by such her majesty's commissioners, or three of them, as be appointed in the City of London to hear and determine divers causes ecclesiastical, tending to the execution of certain statutes made the last parliament for uniformity of order in religion. And if any shall sell or utter any manner of books or papers, being not licensed as is abovesaid, that the same party shall be punished by



order of the said commissioners, as to the quality of the fault shall be thought meet. And touching all other books of matters of religion, or policy, or governance, that have been printed, either on this side the seas, or on the other side, because the diversity of them is great, and that there needeth good consideration to be had of the particularities thereof, her majesty referreth the prohibition or permission thereof to the order, which her said commissioners within the City of London shall take and notify. According to the which her majesty straitly chargeth and commandeth all manner her subjects, and specially the wardens and company of stationers, to be obedient.

Provided that these orders do not extend to any profane authors and works in any language, that have been heretofore commonly received or allowed in any the universities or schools, but the same may be printed, and used as by good order they were accustomed.

52. Item, Although Almighty God is all times to be honoured with all manner of reverence that may be devised; yet of all other times, in time of common prayer the same is most to be regarded; therefore it is to be necessarily received, that in time of the litany, and all other collects and common supplications to Almighty God, all manner of people shall devoutly and humbly kneel upon their knees and give ear thereunto; and that whensoever the name of Jesus shall be in any lesson, sermon, or otherwise in the church pronounced, that due reverence be made of all persons young and old, with lowness of courtesy, and uncovering of heads of the mankind, as thereunto doth necessarily belong, and heretofore hath been accustomed.

53. Item, That all ministers and readers of public prayers, chapters, and homilies shall be charged to read leisurely, plainly, and distinctly; and also such, as are but mean readers, shall peruse over before, once or twice the chapters, and homilies, to the intent they may read to the better understanding of the people, and the more encouragement to godliness.

*An admonition to simple men deceived by malicious.*

The queen's majesty being informed, that in certain places of the realm, sundry of her native subjects, being called to ecclesiastical ministry in the Church, be by sinister persuasion, and perverse construction induced to find some scruple in the form of an oath, which by an act of the last parliament is prescribed to be required

of divers persons, for the recognition of their allegiance to her majesty, which certainly never was ever meant, nor by any equity of words or good sense can be thereof gathered; would that all her loving subjects should understand, that nothing was, is, or shall be meant, or intended by the same oath to have any other duty, allegiance, or bond required by the same oath, than was acknowledged to be due to the most noble kings of famous memory, King Henry VIII., her majesty's father, or King Edward VI., her majesty's brother.

And further her majesty forbiddeth all manner her subjects to give ear or credit to such perverse and malicious persons, which most sinisterly and maliciously labour to notify to her loving subjects, how by the words of the said oath it may be collected, that the kings or queens of this realm, possessors of the crown, may challenge authority and power of ministry of divine offices in the church; wherein her said subjects be much abused by such evil disposed persons. For certainly her majesty neither doth, nor ever will challenge any other authority, than that was challenged and lately used by the said noble kings of famous memory, King Henry VIII. and King Edward VI., which is, and was of ancient time due to the imperial crown of this realm; that is, under God to have the sovereignty and rule over all manner persons born within these her realms, dominions, and countries, of what estate, either ecclesiastical or temporal, soever they be, so as no other foreign power shall or ought to have any superiority over them. And if any person, that hath conceived any other sense of the form of the said oath, shall accept the same oath with this interpretation, sense, or meaning; her majesty is well pleased to accept every such in that behalf, as her good and obedient subjects, and shall acquit them of all manner of penalties contained in the said act against such, as shall peremptorily or obstinately refuse to take the same oath.

*For tables in the church.*

Whereas her majesty understandeth, that in many and sundry parts of the realm the altars of the churches be removed, and tables placed for the administration of the holy sacrament, according to the form of the law therefore provided; and in some other places, the altars be not yet removed, upon opinion conceived of some other order therein to be taken by her majesty's visitors; in the other whereof, saving for an uniformity, there seemeth no

matter of great moment, so that the sacrament be duly and reverently ministered; yet for observation of one uniformity through the whole realm, and for the better imitation of the law in that behalf, it is ordered, that no altar be taken down, but by oversight of the curate of the church, and the churchwardens, or one of them at the least, wherein no riotous or disordered manner to be used. And that the holy table in every church be decently made, and set in the place, where the altar stood, and there commonly covered, as thereto belongeth, and as shall be appointed by the visitors, and so to stand, saving when the communion of the sacrament is to be distributed; at which time the same shall be so placed in good sort within the chancel, as whereby the minister may be more conveniently heard of the communicants in his prayer and ministration, and the communicants also more conveniently, and in more number communicate with the said minister. And after the communion done, from time to time the same holy table to be placed where it stood before.

Item, Where also it was in the time of King Edward VI. used to have the sacramental bread of common fine bread; it is ordered for the more reverence to be given to these holy mysteries, being the sacraments of the body and blood of our Saviour Jesus Christ, that the same sacramental bread be made and formed plain, without any figure thereupon, of the same fineness and fashion round, though somewhat bigger in compass and thickness, as the usual bread and wafer, heretofore named singing cakes, which served for the use of the private mass.

*The form of bidding the prayers, to be used generally in this uniform sort.*

Ye shall pray for Christ's Holy Catholic Church, that is for the whole congregation of Christian people dispersed throughout the whole world, and specially for the Church of England and Ireland. And herein I require you most specially to pray for the queen's most excellent majesty, our sovereign lady Elizabeth, Queen of England, France, and Ireland, defender of the faith, and supreme governor of this realm as well in causes ecclesiastical, as temporal. You shall also pray for the ministers of God's Holy Word and sacraments, as well archbishops and bishops, as other pastors and parishes. You shall also pray for the queen's most honourable Council, and for all the nobility of this realm, that all and every of these in their calling, may serve truly and painfully to the glory of



God, and edifying of his people, remembering the account that they must make. Also ye shall pray for the whole commons of this realm, that they may live in true faith and fear of God, in humble obedience and brotherly charity one to another. Finally, let us praise God for all those which are departed out of this life in the faith of Christ, and pray unto God, that we have grace for to direct our lives after their good example, that after this life, we with them may be made partakers of the glorious resurrection in the life everlasting.

*And this done, show the holy-days, and fasting days.*

All and singular which injunctions the queen's majesty ministereth unto her clergy, and to all other her loving subjects, straitly charging and commanding them to observe and keep the same upon pain of deprivation, sequestration of fruits and benefits, suspension, excommunication, and such other coercion, as to ordinaries, or other having ecclesiastical jurisdiction, whom her majesty hath appointed, or shall appoint for the due execution of the same, shall be seen convenient; charging and commanding them to see these injunctions observed and kept of all persons being under their jurisdictions, as they will answer to her majesty for the contrary. And her highness's pleasure is, that every justice of peace being required, shall assist the ordinaries, and every of them, for the due execution of the said injunctions.

### *Advertisements of Elizabeth.*

*Advertisements partly for due order in the public administration of common prayers, and using the Holy Sacraments, and partly for the apparel of all persons ecclesiastical, by virtue of the queen's majesty's letters, commanding the same, the 25th day of January, in the seventh year of the reign of our sovereign lady Elizabeth, by the grace of God of England, France, and Ireland, queen, defender of the faith, &c.—Ex Præfat. Annal. Elizab. Cambd. edit. Hearn. p. 32. seq. (Bodl. 4to. I. 2. Th. Seld.)*

### THE PREFACE.



HE queen's majesty of her godly zeal calling to remembrance how necessary it is to the advancement of God's glory, and the establishment of Christ's pure religion, for all her



ving subjects, especially the state ecclesiastical, to be knit together in one perfect unity of doctrine, and be conjoined in one uniformity of rites and manners in the ministration of God's Holy Word, in open prayer and ministration of sacraments, as also to be of one decent behaviour in their outward apparel, to be known partly by their distinct habits to be of that vocation (who should be revered the rather in their offices, as ministers of the holy things whereto they be called) hath by her letters directed unto the Archbishop of Canterbury and metropolitan, required, enjoined, and straitly charged, that with assistance and conference had with other bishops, namely such as be in commission for causes ecclesiastical, some orders might be taken, whereby all diversities and varieties among them of the clergy and the people (as breeding nothing but contention, offence, and breach of common charity, and be against the laws, good usage, and ordinances of the realm) might be reformed and repressed, and brought to one manner of uniformity throughout the whole realm, that the people may thereby quietly honour and serve Almighty God in truth, concord, unity, peace, and quietness, as by her majesty's said letters more at large both appear. Whereupon by diligent conference and communication in the same, and at last by assent and consent of the persons before said, these orders and rules ensuing have been thought meet and convenient to be used and followed; nor yet prescribing these rules as laws equivalent with the eternal Word of God, as of necessity to bind the consciences of her subjects in the nature of them considered in themselves, or as they should add any efficacy or more holiness to the virtue of public prayer, and to the sacraments; but as temporal orders mere ecclesiastical, without any in superstition, and as rules in some part of discipline concerning decency, distinction, and order for the time.

*Articles for doctrine and preaching.*

First, That all they, which shall be admitted to preach, shall be diligently examined for their conformity in unity of doctrine, established by public authority; and admonished to use sobriety and discretion in teaching of the people, namely, in matters of controversy; and to consider the gravity of their office, and to foresee with diligence the matters, which they will speak, to utter them to the edification of the audience.

Item, That they set out in their preaching the reverent estimation of the holy sacraments of baptism, and the Lord's Supper, exciting the people to the often and the devout receiving of the Holy Com-

munion of the body and blood of Christ, in such form as is already prescribed in the Book of Common Prayer, and as it is further declared in an homily concerning the virtue and efficacy of the said sacraments.

Item, That they move the people to all obedience as well in observation of the orders appointed in the book of common service, as in the queen's majesty's injunctions, as also of all other civil duties due for subjects to do.

Item, That all licenses for preaching granted out by the archbishop and bishops within the province of Canterbury, bearing date before the first day of March, 1564, be void and of none effect; and nevertheless all such, as shall be thought meet for the office, to be admitted again without difficulty or charge, paying no more but fourpence for the writing, parchment, and wax.

Item, If any preacher or parson, vicar or curate so licensed, shall fortune to preach any matter tending to dissension, or to the derogation of the religion and doctrine received, that the hearers denounce the same to the ordinaries or the next bishop of the same place; but no man openly to contrary or to impugn the same speech so disorderly uttered, whereby may grow offence and disquiet of the people; but shall be convinced and reprov'd by the ordinary after such agreeable order, as shall be seen to him according to the gravity of the offence. And that it be presented within one month after the words spoken.

Item, That they use not to exact or receive unreasonable rewards or stipends of the poor pastors coming to their cures to preach, whereby they might be noted as followers of filthy lucre, rather than use the office of preaching of charity, and good zeal to the salvation of men's souls.

Item, If the parson be able, he shall preach in his own person every three months, or else shall preach by another, -so that his absence be approved by the ordinary of the diocese in respect of sickness, service, or study at the universities. Nevertheless yet for want of able preachers and parsons to tolerate them without penalty, so that they preach in their own persons, or by a learned substitute, once in every three months of the year.

#### *Articles for administration of Prayer and Sacraments.*

First, That the common prayer be said or sung decently and distinctly in such place, as the ordinary shall think meet for the

argeness and straitness of the church and quire, so that the people may be most edified.

Item, That no parson or curate, not admitted by the bishop of the diocese to preach, do expound in his own cure, or elsewhere, any scripture or matter of doctrine, or by the way of exhortation, but only study to read gravely and aptly, without any glossing of the same, or any additions, the homilies already set out, or other such necessary doctrine as is or shall be prescribed for the quiet instruction and edification of the people.

Item, That in cathedral churches and colleges the Holy Communion be ministered upon the first or second Sunday of every month at the least. So that both dean, prebendaries, priests, and clerks do receive, and all other of discretion of the foundation do receive four times in the year at the least.

Item, In ministration of the Holy Communion in the cathedral and collegiate churches, the principal minister shall use a cope with gospeller and epistoler agreeably; and at all other prayers to be said at the communion table, to use no copes but surplices.

Item, That the dean and prebendaries wear a surplice with a silk hood in the quire; and when they preach in the cathedral or collegiate church, to wear their hood.

Item, That every minister saying any public prayers, or ministering of the sacraments or other rites of the Church, shall wear a surplice with sleeves, to be provided at the charges of the parish; and that the parish provide a decent table standing on a frame for the communion table.

Item, That they shall decently cover with carpet, silk, or other decent covering, and with a fair linen cloth (at the time of the ministration) the communion table, and to set the Ten Commandments upon the east wall over the said table.

Item, That all communicants do receive kneeling, and as is appointed by the laws of the realm and the queen's majesty's injunctions.

Item, That the font be not removed, nor that the curate do baptize in parish churches in any basins, nor in any other form, than is already prescribed, without charging the parent to be present or absent at the christening of his child, although the parent may be present or absent, but not to answer as godfather for his child.

Item, That no child be admitted to answer as godfather or godmother, except the child hath received the communion.



Item, That there be none other holidays observed besides the Sundays, but only such as be set out for holidays, as in the statute “anno quinto et sexto Edwardi sexti,” and in the new calendar authorized by the queen’s majesty.

Item, That when any Christian body is in passing, that the bell be tolled, and that the curate be specially called for to comfort the sick person, and after the time of his passing to ring no more but one short peal, and one before the burial, and another short peal after the burial.

Item, That on Sundays there be no shops open, nor artificers commonly going about their affairs worldly; and that in all fairs and common markets falling upon the Sunday, there be no showing of any wares before the service be done.

Item, That in the Rogation days of procession they sing or say in English the two psalms beginning, “Benedic anima mea,” &c., with the litany and suffrages thereunto with one homily of thanksgiving to God, already devised and divided into four parts, without addition of any superstitious ceremonies heretofore used.

*Articles for certain orders in ecclesiastical policy.*

First, against the day of giving of orders appointed, the bishops shall give open monitions to all men to except against such as they know not to be worthy either for life or conversation. And there to give notice that none shall sue for orders but within their own diocese, where they were born, or had their long time of dwelling, except such, as shall be of degree in the universities.

Item, That young priests or ministers made or to be made, be so instructed, that they be able to make apt answers concerning the form of the catechism prescribed.

Item, That no curate or minister be permitted to serve without examination and admission of the ordinary or his deputy in writing, having respect to the greatness of the cure and the meetness of the party; and that the said ministers, if they remove from one diocese to another, be by no means admitted to serve without testimony of the diocesan from whence they come in writing of their honesty and ability.

Item, That the bishop do call home once in the year any prebendary in his church, or beneficed in the diocese, which studieth at the universities, to know how he profited in learning, and that he be not suffered to be a serving or waiting man dissolutely.

Item, That at the archdeacon’s visitation the archdeacon shall



appoint the curates to certain texts of the New Testament to be conned without book. And in their next synod to exact a rehearsal of them.

Item, That the churchwardens once in the quarter declare by their curates in bills subscribed with their hands to the ordinary or to the next officer under him, who they be, which will not readily pay their penalties for not coming to God's Divine service accordingly.

Item, That the ordinaries do use good diligent examination to foresee all simoniacal pacts or covenants with the patrons or presenters for the spoil of their glebe, tithes, or mansion houses.

Item, That no persons be suffered to marry within the Levitical degrees mentioned in a table set forth by the Archbishop of Canterbury in that behalf A.D. 1563; and if any such be, to be separated by order of law.

*Articles for outward apparel of persons ecclesiastical.*

First, That all archbishops and bishops do use and continue their accustomed apparel.

Item, That all deans of cathedral churches, masters of colleges, all archdeacons, and other dignities in cathedral churches, doctors, bachelors of divinity and law, having any ecclesiastical living, shall wear in their common apparel abroad a side gown with sleeves straight at the hand without any cuts in the same; and that also without any falling cape; and to wear tippets of sarcenet, as is lawful for them by the act of parliament, "anno xxiv. Hen. octavi."

Item, That all doctors of physic, or of any other faculty, having any living ecclesiastical, or any other that may dispense by the church one hundred marks, so to be esteemed by the fruits or tenths of their promotions, and all prebendaries, whose promotions be valued at £20 or upward, wear the like apparel.

Item, That they and all ecclesiastical persons or other, having any ecclesiastical living, do wear the cap appointed by the injunctions. And they to wear no hats but in their journeying.

Item, That they in their journeying do wear their cloaks with sleeves put on, and like in fashion to their gowns without guards, welts, or cuts.

Item, That in their private houses and studies they use their own liberty of comely apparel.

Item, That all inferior ecclesiastical persons shall wear long gowns of the fashion aforesaid, and caps as before is prescribed.

Item, That all poor parsons, vicars, and curates do endeavour themselves to conform their apparel in like sort so soon and as conveniently, as their ability will serve to the same. Provided that their ability be judged by the bishop of the diocese. And if their ability will not suffer to buy them long gowns of the form afore prescribed, that then they shall wear their short gowns agreeable to the form before expressed.

Item, That all such persons, as have been or be ecclesiastical, and serve not the ministry, or have not accepted, or shall refuse to accept, the oath of obedience to the queen's majesty, do from henceforth abroad wear none of the said apparel of the form and fashion aforesaid, but to go as mere laymen, till they be reconciled to obedience; and who shall obstinately refuse to do the same, that they be presented by the ordinary to the commissioners in causes ecclesiastical, and by them to be reformed accordingly.

*Protestations to be made, promised, and subscribed by them that shall hereafter be admitted to any office, room, or cure in any church, or other place ecclesiastical.*

Inprimis, I shall not preach or publicly interpret, but only read that, which is appointed by public authority, without special licence of the bishop under his seal.

I shall read the service appointed plainly, distinctly, and audibly, that all the people may hear and understand.

I shall keep the register book according to the queen's majesty's injunctions.

I shall use sobriety in apparel, and specially in the church at common prayers, according to order appointed.

I shall move the parishioners to quiet and concord, and not give them cause of offence, and shall help to reconcile them, which be at variance, to my uttermost power.

I shall read daily at the least one chapter of the Old Testament and another of the New, with good advisement to the increase of my knowledge.

I do also faithfully promise in my person to use and exercise my office and place to the honour of God, to the quiet of the queen's subjects within my charge, in truth, concord, and unity. And also to observe, keep, and maintain such order and uniformity in a external policy, rites, and ceremonies of the Church, as by the laws, good usages, and orders are already well provided and established.

I shall not openly intermeddle with any artificers occupations, as covetously to seek a gain thereby, having in ecclesiastical living to the sum of twenty nobles or above by year.

Agreed upon, and subscribed by

Matthæus Cantuariensis,

Edmundus Londoniensis,

Richardus Eliensis,

Edmundus Roffensis,

Robertus Wintoniensis,

Nicolaus Lincolnensis,

*Commissioners in causes ecclesiastical,  
with others.*



## CHAPTER IV.

## THE ARTICLES.

When set forth.



HE Articles of Religion were set forth on three principal occasions; once in the reign of Edward VI., and twice in that of Elizabeth. The edition of Edward VI. was compiled at the end of 1552 or beginning of 1553.

First edition ;

This edition consisted of forty-two articles. They were published in Latin by R. Wolfe in or about the month of June, 1553. Immediately afterwards, but in the same month, or at latest before the death of Edward VI., which took place on the 6th of July in that year, were printed two editions in English by Day and Grafton respectively. The reprint below is from the text of Grafton.

how compiled.

This series of articles purport to have been agreed upon "in the synod at London in 1552." The accuracy of the recital is somewhat doubtful, (y) and has been denied by several competent authorities. But the indirect contemporary evidence is strong in favour of their synodical origin. They were generally, if not universally, admitted at the time to have been so sanctioned and issued; and when the preparations were being made in 1562 for the drawing up of the present Thirty-nine Articles, the copies of these put into the hands of the members of convocation were styled "*Articuli in Synodo Londinensi editi.*"

Of synodical authority.

The Articles of 1562, in Latin.

The first edition of Elizabeth's reign is in Latin. They are commonly styled the Articles of 1562, and the introductory

(y) Dr. Lamb's Articles, pp. 9 and 4.



clause thus recites: "Articuli de quibus in synodo Londinensi anno Domini juxta ecclesiæ Anglicanæ computationem MDLXII." &c. They were, however, not laid before the Queen till February, 1563, nor printed till late in the same year. They had originated with Archbishop Parker, who personally recasted Edward the Sixth's articles, and submitted his draft to convocation in January, 1562. Here they were debated, and after various alterations were finally assented to by both houses. As agreed to, the number was reduced to thirty-eight. But though these articles are thus of full synodical authority, they do not bind legally, the copy sanctioned by the Queen next year being alone of full legal validity. (z)

Arch. Parker's edition.

This copy differs from Parker's draft in containing two remarkable alterations therein, viz.—first, the addition of the clause, "Habet Ecclesia ritus statuendi jus et in fidei controversiis auctoritatem," at the commencement of the 20th article; and secondly, the entire omission of the 29th article, which had been included by Parker.

In the same year appeared an English translation by Jugge and Cawood, which differs from the Latin in omitting the disputed clause in the 20th article, but follows it in not containing the 29th article.

The Articles of 1562, in English.

The next issue of the articles which calls for notice was in 1571. As already put forth by Elizabeth, they had been ratified by her, and possessed whatever weight such ratification could give them, but they had not in any manner been confirmed or recognized by statute or the legislature. In this year (1571) the proceedings of the pope led to the passing of two important statutes, (a) and probably caused fresh attention to be directed

The Articles of 1571.

(z) Coke, Inst. P. 4, c. 74, p. 323.

(a) 13 Eliz. c. 2, "An Act against the bringing in and putting in execution of Bulls, Writings, or Instruments and other superstitious things from the See of Rome;" 13 Eliz. c. 12, "An Act for the Ministers of the Church to be of sound Religion."

to the articles. Hitherto but little attempt had been made to enforce a strict observance of them. Accordingly they were again considered in and subscribed by both houses of convocation, and Bishop Jewel was appointed editor to prepare a new edition, which he did, making a great many slight and verbal alterations, but none of serious importance.

To what extent  
the Articles are  
legally binding.

The articles thus prepared and edited have not been formally and expressly confirmed or made binding by the direct action of the legislature. Indirectly, however, this has been done. The 1st section of the statute 13 Eliz. c. 12, provides that every ecclesiastical person "shall, in the presence of the bishop and guardian of the spiritualities of some one diocese where he hath or shall have ecclesiastical living, declare his assent and subscribe to all the articles of religion which only concern the confession of the true Christian faith and the doctrine of the sacraments comprised in a book imprinted intituled 'Articles whereupon it was agreed by the archbishop and bishops of both provinces and the whole clergy in the Convocation holden at London in the year of our Lord God 1562,' " &c.

Value of the  
various editions.

With regard to the various editions in Latin and English of the Articles, and the relative weight and value of each, Dr. Waterland thus expresses himself:—"First, that the articles were passed, recorded, and ratified in the year 1562, *and in Latin only*. Secondly, that those Latin articles were revised and corrected by the convocation of 1571. Thirdly, that an authentic English translation was then made of the Latin articles by the same convocation, and the Latin and English adjusted as nearly as possible. Fourthly, that the articles thus perfected in both *languages* were published the same year, and by the royal authority. Fifthly, subscription was required the same year to the English articles, called the Articles of 1552 by the famous Act of the 13th of Elizabeth.

"These things considered, I might justly say, with Bishop Burnet, that the Latin and English are both equally authentic. Thus much, however, I may certainly infer, that if in

any places the English version be ambiguous where the Latin original is clear and determinate, the Latin ought to fix the more doubtful sense of the other, as also vice, it being evident that the convocation, queen, and parliament intended the same sense in both." (b)

THE EDITIONS IN ENGLISH OF THE ARTICLES  
OF 1553 AND 1571. (c)

1552 [1553].

Articles agreed on by the Bishops, and other learned men in the Synod at London, in the year of Our Lord God, 1552, for the avoiding of controversy in opinions, and the establishment of a godly concord, in certain matters of Religion.

I.

*Of faith in the Holy Trinity.*

There is but one living, and true God, and he is everlasting, without body, parts, or passions, of infinite power, wisdom, and goodness, the maker, and preserver of all things both visible, and invisible, and in unity of this Godhead there be three persons of one substance, power, and eternity, the Father, the Son, and the holy Ghost.

1571.

Articles whereupon it was agreed by the Archbishops and Bishops of both provinces and the whole clergy, in the Convocation holden at London, in the year of our Lord God, 1562, according to the computation of the Church of England, for the avoiding of the diversities of opinions, and for the stablishing of consent touching true Religion.

I.

*Of faith in the Holy Trinity.*

There is but one living and true God, everlasting, without body, parts, or passions, of infinite power, wisdom, and goodness, the maker and preserver of all things both visible and invisible. And in unity of this Godhead there be three persons, of one substance, power, and eternity, the Father, the Son, and the holy Ghost.

(b) Waterland, Works, edited by Mildert, 1823, "Supplement to the Case of Arian Subscription," p. 345.

(c) The Articles as here printed are taken from Archdeacon Hardwicke's excellent and learned "History of the Articles." The [ ] indicate those portions of the edition of 1571 which are wanting in the earlier edition; while the †† denote that portions of the earlier edition are considerably modified in or altogether absent from the later edition.

1553.

II.

*That the word, or Son of God,  
was made a very man.*

The son which is the word of the father, [ ] took man's nature in the womb of the blessed virgin Mary of her substance, so that two whole and perfect natures, that is to say, the Godhead and manhood were joined together into one person, never to be divided, whereof is one Christ very God and very man, who truly suffered, was crucified, dead, and buried, to reconcile his Father to us, and to be a sacrifice † for all sin of man, both original and actual.†

III.

*Of the going down of Christ into  
hell.*

As Christ died, and was buried for us; so also it is to be believed that he went down into hell. For the body lay in the sepulchre, until the resurrection; but his ghost departing from him, was with the ghosts that were in prison, or in hell, and did preach to the same, as the place of St. Peter doth testify.

IV.

*The Resurrection of Christ.*

Christ did truly rise again from death, and took again his body with flesh, bones, and all things appertaining to the perfection of man's nature, where-

1571.

II.

*Of the word or Son of God,  
which was made very man.*

The Son, which is the word of the Father, begotten from everlasting of the Father, the very and eternal God, of one substance with the Father, took man's nature in the womb of the blessed Virgin, of her substance; so that two whole and perfect natures, that is to say the Godhead and manhood, were joined together in one person, never to be divided, whereof is one Christ, very God and very man, who truly suffered, was crucified, dead, and buried, to reconcile his Father to us, and to be a sacrifice, not only for original guilt, but also for all actual sins of men.

III.

*Of the going down of Christ into  
hell.*

As Christ died for us, and was buried; so also it is to be believed that he went down into hell.

IV.

*Of the Resurrection of Christ.*

Christ did truly arise again from death, and took again his body, with flesh, bones, and all things appertaining to the perfection of man's nature, where-



1553.

with he ascended into heaven,  
and there sitteth, until he return  
to judge [       ] men at the last  
day.

1571.

with he ascended into heaven,  
and there sitteth, until he return  
to judge all men at the last day.

V.

*Of the Holy Ghost.*

The Holy Ghost, proceeding  
from the Father and the Son, is  
of one substance, majesty, and  
glory with the Father and the  
Son, very and eternal God.

V.

*The doctrine of Holy Scripture is  
sufficient to salvation.*

Holy Scripture containeth all  
things necessary to salvation;  
so that whatsoever is †neither†  
read therein, nor may be proved  
thereby, although it be some-  
time received of the faithful, as  
godly and profitable for an  
order and comeliness; yet †no  
man ought to be constrained to  
believe it†, as an article of faith,  
or repute it †requisite to the  
necessity† of salvation. [

VI.

*Of the sufficiency of the Holy  
Scriptures for salvation.*

Holy Scripture containeth all  
things necessary to salvation; so  
that whatsoever is not read  
therein, or may be proved  
thereby, is not to be required of  
any man, that it should be be-  
lieved as an article of the Faith,  
or be thought requisite neces-  
sary to salvation.

In the name of Holy Scrip-  
ture, we do understand those  
Canonical Books of the Old and  
New Testament, of whose autho-  
rity was never any doubt in the  
Church.

*Of the names and number of the  
Canonical Books.*

Genesis,  
Exodus,  
Leviticus,  
Numbers,  
Deuteronomy,  
Joshua,  
Judges,  
Ruth,  
The First Book of Samuel,  
The Second Book of Samuel,  
The First Book of Kings,

1553.

1571.

The Second Book of Kings,  
 The First Book of Chronicles,  
 The Second Book of Chronicles,  
 The First Book of Esdras,  
 The Second Book of Esdras,  
 The Book of Esther,  
 The Book of Job,  
 The Psalms,  
 The Proverbs,  
 Ecclesiastes, or the Preacher,  
 Canticles, or Songs of Solomon,  
 4 Prophets the greater,  
 12 Prophets the less.

And the other books (as Hierome saith) the Church doth read for example of life and instruction of manners; but yet doth it not apply them to establish any doctrine. Such are these following:—

The Third Book of Esdras,  
 The Fourth Book of Esdras,  
 The Book of Tobias,  
 The Book of Judith,  
 The rest of the Book of Esther,  
 The Book of Wisdom,  
 Jesus the Son of Sirach,  
 Baruch, the prophet,  
 Song of the Three Children,  
 The story of Susanna,  
 Of Bel and the Dragon,  
 The prayer of Manasses,  
 The First Book of Maccabees,  
 The Second Book of Maccabees.

All the Books of the New Testament, as they are commonly received, we do receive and account them for canonical.

## VI.

*The Old Testament †is not to be refused†.*

†The Old Testament is not to be put away as though it were

## VII.

*Of the Old Testament.*

The Old Testament is not contrary to the New, for both in the Old and New Testament

1553.

contrary to the New, but to be kept still; for both in the Old and New Testaments, everlasting life is offered to mankind by Christ, who is the only mediator between God and man, being both God and man. Wherefore they are not to be heard, which feign that the old fathers did look only for transitory promises†. [

[

]

1571.

everlasting life\* is offered to mankind by Christ, who is the only mediator between God and man, being both God and man. Wherefore they are not to be heard which feign that the old fathers did look only for transitory promises. Although the law given from God by Moses, as touching ceremonies and rites, does not bind Christian men, nor the civil precepts thereof, ought of necessity to be received in any commonwealth, yet notwithstanding, no Christian man whatsoever is free from the obedience of the commandments, which are called moral.

VII.

*The three Creeds.*

The three Creeds, Nicene Creed, Athanasius Creed, and that which is commonly called the Apostles' Creed, ought thoroughly to be received [ ] ; for they may be proved by most certain warrants of Holy Scripture.

VIII.

*Of the three Creeds.*

The three Creeds, Nicene Creed, Athanasius Creed, and that which is commonly called the Apostles' Creed, ought thoroughly to be received and believed; for they may be proved by most certain warrants of Holy Scripture.

VIII.

*Of original or birth sin.*

Original sin standeth not in the following of Adam, as the Pelagians do vainly talk, which also the Anabaptists do nowadays renew, but it is the fault and corruption of the nature of every man, that naturally is engendered of the offspring of Adam, whereby man is very far gone from †his former righteousness, which he had at his creation† and is of his own nature

IX.

*Of original or birth sin.*

Original sin standeth not in the following of Adam (as the Pelagians do vainly talk) but it is the fault and corruption of the nature of every man, that naturally is engendered of the offspring of Adam, whereby man is very far gone from original righteousness, and is of his own nature inclined to evil, so that the flesh lusteth always contrary to the spirit, and therefore in

1553.

†given† to evil, so that the flesh desireth always contrary to the spirit, and therefore in every person born into this world, it deserveth God's wrath and damnation; and this infection of nature doth remain, yea in them that are baptized, whereby the lust of the flesh called in Greek *φρόνημα σαρκός* (which some do expound the wisdom, some sensuality, some the affection, some the desire of the flesh) is not subject to the law of God. And although there is no condemnation for them that believe, and are baptized, yet the Apostle doth confess, that concupiscence and lust hath of itself the nature of sin.

IX.

*Of free will.*

†We have no power to do good works pleasant and acceptable to God, without the grace of God by Christ, preventing us that we may have a good will, and working in us, when we have that will.†

X.

*Of grace.*

The grace of Christ, or the Holy Ghost by him given doth take away the stony heart, and giveth an heart of flesh. And although, those that have no

1571.

every person born into this world, it deserveth God's wrath and damnation. And this infection of nature doth remain, yea in them that are regenerated, whereby the lust of the flesh, called in Greek *φρόνημα σαρκός*, which some do expound the wisdom, some sensuality, some the affection, some the desire of the flesh, is not subject to the law of God. And although there is no condemnation for them that believe and are baptized; yet the apostle doth confess that concupiscence and lust hath of itself the nature of sin.

X.

*Of free will.*

The condition of man after the fall of Adam is such, that he cannot turn and prepare himself by his own natural strength and good works, to faith and calling upon God: wherefore we have no power to do good works pleasant and acceptable to God, without the grace of God by Christ preventing us, that we may have a good will, and working with us, when we have that good will.



1553.

will to good things, he maketh them to will, and those that would evil things, he maketh them not to will the same; yet nevertheless he enforceth not the will. And therefore no man when he sinneth can excuse himself, as not worthy to be blamed or condemned, by alleging that he sinned unwillingly, or by compulsion.

XI.

*Of the justification of man.*

†Justification by only faith in Jesus Christ in that sense, as it is declared in the homily of justification, is a most certain and wholesome doctrine for Christian men.†

1571.

XI.

*Of the justification of man.*

We are accounted righteous before God, only for the merit of our Lord and Saviour Jesus Christ, by faith, and not for our own works or deservings. Wherefore, that we are justified by faith only, is a most wholesome doctrine and very full of comfort, as more largely is expressed in the homily of justification.

XII.

*Of good works.*

Albeit that good works, which are the fruits of faith, and follow after justification, cannot put away our sins, and endure the severity of God's judgment; yet are they pleasing and acceptable to God in Christ, and do spring out necessarily of a true and lively faith, insomuch that by them a lively faith may be as evidently known, as a tree discerned by the fruit.

XII.

*Works before justification.*

Works done before the grace

XIII.

*Of works before justification.*

Works done before the grace

1553.

of Christ and the inspiration of his spirit are not pleasant to God, forasmuch as they spring not of faith in Jesus Christ, neither do they make men meet to receive grace, or (as the school authors say) deserve grace of congruity; but because they are not done as God hath willed and commanded them to be done, we doubt not but they have the nature of sin.

1571.

of Christ, and the inspiration of his spirit, are not pleasant to God, forasmuch as they spring not of faith in Jesus Christ, neither do they make men meet to receive grace, or (as the school authors say) deserve grace of congruity; yea rather for that they are not done as God hath willed and commanded them to be done, we doubt not but they have the nature of sin.

## XIII.

*Works of supererogation.*

Voluntary works besides, over, and above God's commandments, which they call works of supererogation, cannot be taught without arrogance, and †iniquity.† For by them men do declare, that they do not only render to God as much as they are bound to do, but that they do more for his sake than of bounden duty is required: whereas Christ saith plainly: When you have done all that are commanded you, say, We be unprofitable servants.

## XIV.

*Of Works of supererogation.*

Voluntary works besides, over and above God's commandments, which they call works of supererogation, cannot be taught without arrogance and impiety. For by them men do declare that they do not only render unto God as much as they are bound to do, but that they do more for his sake than of bounden duty is required: Whereas Christ saith plainly, When ye have done all that are commanded to you, say, We be unprofitable servants.

## XIV.

*No man is without sin, but Christ alone.*

Christ in the truth of our nature was made like unto us in all things, sin only except, from which he was clearly void both in his flesh, and in his spirit. He came to be the lamb without spot, who by sacrifice of himself made once for ever, should take away the sins of the world; and sin (as St. John saith) was not

## XV.

*Of Christ alone without sin.*

Christ in the truth of our nature, was made like unto us in all things (sin only except) from which he was clearly void, both in his flesh and in his spirit. He came to be the lamb without spot, who by the sacrifice of himself once made, should take away the sins of the world; and sin (as St. John saith) was not in him. But all we the rest

1553.

in him. But the rest, yea, although we be baptized, and born again in Christ, yet we all offend in many things; and if we say we have no sin, we deceive ourselves and the truth is not in us.

XV.

*Of sin †against the Holy Ghost.†*

Every deadly sin willingly committed after baptism, is not sin against the Holy Ghost, and unpardonable; wherefore the place for penitents is not to be denied to such as fall into sin after baptism. After we have received the Holy Ghost, we may depart from grace given, and fall into sin, and by the grace of God we may rise again, and amend our lives. And therefore they are to be condemned, which say they can no more sin as long as they live here, or deny the place for penitence to such as truly repent, and amend their lives.

XVI.

*Blasphemy against the Holy Ghost.*

Blasphemy against the Holy Ghost is, when a man of malice and stubbornness of mind, doth rail upon the truth of God's word manifestly perceived, and being enemy thereunto persecuteth the same. And because such be guilty of God's curse, they entangle themselves with a most grievous, and heinous crime, whereupon this kind of sin is called and affirmed of the Lord unpardonable.

1571.

(although baptized, and born again in Christ) yet offend in many things, and if we say we have no sin, we deceive ourselves, and the truth is not in us.

XVI.

*Of sin after Baptism.*

Not every deadly sin willingly committed after baptism, is sin against the Holy Ghost, and unpardonable. Wherefore, the grant of repentance is not to be denied to such as fall into sin after baptism. After we have received the Holy Ghost, we may depart from grace given, and fall into sin, and by the grace of God (we may) arise again and amend our lives. And therefore, they are to be condemned, which say they can no more sin as long as they live here, or deny the place of forgiveness to such as truly repent.

1553.

XVII.

*Of predestination and election.*

Predestination to life is the everlasting purpose of God, whereby (before the foundations of the world were laid) he hath constantly decreed by his own judgment secret to us, to deliver from curse and damnation those whom he hath chosen [ ] out of mankind, and to bring them to everlasting salvation by Christ, as vessels made to honour; whereupon, such as have so excellent a benefit of God given unto them be called, according to God's purpose, by his spirit, working in due season, they through grace obey the calling, they be justified freely, they be made sons by adoption, they be made like the image of God's only begotten son Jesus Christ, they walk religiously in good works, and at length by God's mercy, they attain to everlasting felicity.

As the Godly consideration of predestination, and our election in Christ is full of sweet, pleasant, and unspeakable comfort to godly persons, and such as feel in themselves the working of the spirit of Christ, mortifying the works of the flesh, and their earthly members, and drawing up their mind to high and heavenly things, as well because it doth greatly establish and confirm their faith of eternal salvation to be enjoyed through Christ, as because it doth fervently kindle their love towards God; so for curious and carnal persons lacking the spirit of

1571.

XVII.

*Of predestination and election.*

Predestination to life is the everlasting purpose of God, whereby (before the foundations of the world were laid) he hath constantly decreed by his counsel secret to us, to deliver from curse and damnation, those whom he hath chosen in Christ out of mankind, and to bring them by Christ to everlasting salvation, as vessels made to honour. Wherefore they which be indue with so excellent a benefit of God, be called according to God's purpose by his spirit working in due season; they through grace obey the calling; they be justified freely; they be made sons of God by adoption; they be made like the image of his only begotten son Jesus Christ; they walk religiously in good works, and at length by God's mercy, they attain to everlasting felicity.

As the godly consideration of predestination, and our election in Christ, is full of sweet, pleasant, and unspeakable comfort to godly persons, and such as feel in themselves the working of the spirit of Christ, mortifying the works of the flesh, and their earthly members, and drawing up their mind to high and heavenly things, as well because it doth greatly establish and confirm their faith of eternal salvation to be enjoyed through Christ, as because it doth fervently kindle their love towards God: so, for curious and carnal persons, lacking the spirit of



1553.

Christ, to have continually before their eyes the sentence of God's predestination, is a most dangerous downfall, whereby the devil may thrust them either into desperation, or into recklessness of most unclean living, no less perilous than desperation.

Furthermore, although the decrees of predestination are unknown unto us, yet we must receive God's promises in such wise as they be generally set forth to us in holy scripture, and in our doings that will of God is to be followed, which we have expressly declared unto us in the word of God.

XVIII.

*We must trust to obtain eternal salvation only by the name of Christ.*

They also are to be had accursed and abhorred that presume to say, that every man shall be saved by the law, or sect which he professeth, so that he be diligent to frame his life according to that law, and the light of nature: For Holy Scripture doth set out unto us only the name of Jesus Christ, whereby men must be saved.

XIX.

*All men are bound to keep the moral commandments of the law.*

The law, which was given of God by Moses, although it bind not Christian men, as concerning the ceremonies, and rites of the same, neither is it required,

1571.

Christ, to have continually before their eyes the sentence of God's predestination, is a most dangerous downfall, whereby the devil doth thrust them either into desperation, or into recklessness of most unclean living, no less perilous then desperation.

Furthermore, we must receive God's promises in such wise, as they be generally set forth to us in Holy Scripture; and in our doings, that will of God is to be followed, which we have expressly declared unto us in the Word of God.

XVIII.

*Of obtaining eternal salvation, only by the name of Christ.*

They also are to be had accursed, that presume to say, that every man shall be saved by the law or sect which he professeth, so that he be diligent to frame his life according to that law, and the light of nature. For Holy Scripture doth set out unto us only the name of Jesus Christ, whereby men must be saved.

1553.

that the civil precepts and orders of it should of necessity be received in any commonwealth: Yet no man, (be he never so perfect a Christian) is exempt and loose from the obedience of those commandments, which are called moral. Wherefore they are not to be hearkened unto, who affirm that holy scripture is given only to the weak, and do boast themselves continually of the spirit, of whom (they say) they have learned such things as they teach, although the same be most evidently repugnant to the holy scripture.

## XX.

*Of the Church.*

The visible Church of Christ is a congregation of faithful men, in the which the pure word of God is preached, and the sacraments be duly ministered, according to Christ's ordinance, in all those things that of necessity are requisite to the same.

As the Church of Jerusalem, of Alexandria, and of Antioch hath erred, so also the Church of Rome hath erred, not only in their living, but also in matters of their faith.

## XXI.

*Of the Authority of the Church.*

[ ] It is not lawful for the Church to ordain anything that is contrary to God's word written, neither may it so expound one place of scripture,

1571.

## XIX.

*Of the Church.*

The visible Church of Christ is a congregation of faithful men, in the which the pure Word of God is preached, and the Sacraments be duly ministered, according to Christ's ordinance in all those things that of necessity are requisite to the same.

As the Church of Jerusalem, Alexandria, and Antioch have erred; so also the Church of Rome hath erred, not only in their living and manner of ceremonies, but also in matters of faith.

## XX.

*Of the authority of the Church.*

The Church hath power to decree rites and ceremonies, and authority in controversies of faith; and yet it is not lawful for the Church to ordain any-

1553.

that it be repugnant to another. Wherefore although the Church be a witness and a keeper of holy writ; yet as it ought not to decree anything against the same, so besides the same ought it not to enforce anything to be believed for necessity of salvation.

XXII.

*Of the authority of general councils.*

General councils may not be gathered together, without the commandment and will of princes: and when they be gathered (forasmuch as they be an assembly of men whereof all be not governed with the spirit and Word of God) they may err and sometimes have erred, not only in worldly matters, but also in things pertaining unto God. Wherefore things ordained by them, as necessary to salvation, have neither strength nor authority, unless it may be declared, that they be taken out of Holy Scripture.

XXIII.

*Of purgatory.*

†The doctrine of school authors† concerning purgatory, pardons, worshipping, and adoration as well of images, as of relics, and also invocation of saints, is a fond thing vainly† feigned†, and grounded upon

1571.

thing that is contrary to God's word written, neither may it so expound one place of Scripture, that it be repugnant to another. Wherefore, although the Church be a witness and a keeper of holy writ; yet, as it ought not to decree anything against the same, so besides the same, ought it not to enforce any thing to be believed for necessity of salvation.

XXI.

*Of the authority of general Councils.*

General councils may not be gathered together without the commandment and will of princes. And when they be gathered together (forasmuch as they be an assembly of men, whereof all be not governed with the spirit and Word of God) they may err, and sometime have erred, even in things pertaining unto God. Wherefore things ordained by them as necessary to salvation have neither strength nor authority, unless it may be declared that they be taken out of Holy Scripture.

XXII.

*Of purgatory.*

The Romish doctrine concerning purgatory, pardons, worshipping and adoration as well of images, as of relics, and also invocation of saints, is a fond thing, vainly invented, and grounded upon no warrant of

1553.

no warrant of Scripture, but rather repugnant to the Word of God.

XXIV.

*No man may minister in the congregation except he be called.*

It is not lawful for any man to take upon him the office of public preaching, or ministering the Sacraments in the congregation, before he be lawfully called to execute the same, and those we ought to judge lawfully called and sent, which be chosen and called to this work by men who have public authority given unto them in the congregation, to call and send ministers into the Lord's vineyard.

XXV.

*Men must speak in the congregation in such tongue as the people understandeth.*

†It is most seemly and most agreeable to the Word of God, that in the congregation nothing be openly read or spoken in a tongue unknown to the people, the which thing St. Paul did forbid, except some were present that should declare the same.†

XXVI.

*Of the Sacraments.*

Our Lord Jesus Christ hath knit together a company of new people with Sacraments, most few in number, most easy to be kept, most excellent in signification, as is Baptism and the Lord's Supper.

1571.

Scripture, but rather repugnant to the Word of God.

XXIII.

*Of ministering in the congregation.*

It is not lawful for any man to take upon him the office of public preaching, or ministering the Sacraments in the congregation, before he be lawfully called and sent to execute the same. And those we ought to judge lawfully called and sent, which be chosen and called to this work by men who have public authority given unto them in the congregation, to call and send ministers into the Lord's vineyard.

XXIV.

*Of speaking in the congregation, in such a tongue as the people understandeth.*

It is a thing plainly repugnant to the Word of God, and the custom of the primitive Church, to have public prayer in the Church, or to minister the Sacraments in a tongue not understood of the people.

XXV.

*Of the Sacraments.*

Sacraments ordained of Christ be not only badges or tokens of Christian men's profession; but rather they be certain sure witnessses and effectual signs of grace and God's good will towards us, by the which he doth



1553.

1571.

[

The Sacraments were not ordained of Christ to be gazed upon, or to be carried about, but that we should rightly use them. And in such only, as worthily receive the same, they have an wholesome effect and operation, and yet not that of the work wrought, as some men speak, which word, as it is strange, and unknown to Holy Scripture, so it engendereth no godly, but a very superstitious sense. But they that receive the Sacraments unworthily, purchase to themselves damnation as Saint Paul saith.

Sacraments ordained by the Word of God be not only badges, and tokens of Christian men's profession, but rather they be certain sure witnesses and effectual signs of grace and God's good will towards us, by the which he doth work invisible in us, and doth not only quicken, but also strengthen and confirm our faith in him.

XXVII.

*The wickedness of the ministers doth not take away the effectual operation of God's ordinances.*

Although in the visible Church the evil be ever mingled with the good, and sometime the evil have chief authority in the ministration of the Word and Sacraments: yet forasmuch as they

work invisible in us, and doth not only quicken, but also strengthen and confirm our faith in him.

There are two Sacraments ordained of Christ our Lord in the Gospel, that is to say, Baptism and the Supper of the Lord.

Those five, commonly called Sacraments, that is to say, Confirmation, Penance, Orders, Matrimony, and Extreme Unction, are not to be counted for Sacraments of the Gospel, being such as have grown partly of the corrupt following of the Apostles, partly are states of life allowed in the Scriptures; but yet have not like nature of Sacraments with Baptism and the Lord's Supper, for that they have not any visible sign or ceremony ordained of God.

The Sacraments were not ordained of Christ to be gazed upon, or to be carried about; but that we should duly use them. And in such only, as worthily receive the same, they have a wholesome effect or operation: but they that receive them unworthily, purchase to themselves damnation, as St. Paul saith.

XXVI.

*Of the unworthiness of the ministers, which binder not the effect of the Sacraments.*

Although in the visible Church the evil be ever mingled with the good, and sometime the evil have chief authority in the ministration of the Word and Sacraments; yet forasmuch as

1553.

do not the same in their own name, but do minister by Christ's commission and authority, we may use their ministry both in hearing the Word of God, and in the receiving the Sacraments, neither is the effect of God's ordinances taken away by their wickedness, or the grace of God's gifts diminished from such, as by faith and rightly receive the Sacraments ministered unto them, which be effectual, because of Christ's institution and promise, although they be ministered by evil men. Nevertheless it appertaineth to the discipline of the Church, that enquiry be made of†such†, and that they be accused by those that have knowledge of their offences, and finally being found guilty by just judgment, be deposed.

## XXVIII.

*Of Baptism.*

Baptism is not only a sign of profession, and mark of difference, whereby Christian men are discerned from other that be not christened, but it is also a sign and seal of our new birth, whereby, as by an instrument they that receive Baptism rightly, are grafted in the Church, the promises of forgiveness of sin, and our adoption to be the sons of God, [ ] are visibly signed and sealed, faith is confirmed, and grace increased by virtue of prayer unto God. †The custom of the Church to Christian young children, is to be commended,

1571.

they do not the same in their own name but in Christ's, and do minister by his commission and authority, we may use their ministry, both in hearing the Word of God, and in the receiving of the Sacraments. Neither is the effect of Christ's ordinance taken away by their wickedness, nor the grace of God's gifts diminished from such as by faith and rightly do receive the Sacraments ministered unto them, which be effectual, because of Christ's institution and promise, although they be ministered by evil men.

Nevertheless, it appertaineth to the discipline of the Church, that inquiry be made of evil ministers, and that they be accused by those that have knowledge of their offences; and finally, being found guilty by just judgment, be deposed.

## XXVII.

*Of Baptism.*

Baptism is not only a sign of profession, and mark of difference, whereby Christian men are discerned from other that be not christened; but is also a sign of regeneration or new birth, whereby as by an instrument, they that receive Baptism rightly are grafted into the Church; the promises of the forgiveness of sin, and of our adoption to be the sons of God, by the Holy Ghost, are visibly signed and sealed; faith is confirmed; and grace increased by virtue of prayer unto God. The Baptism of young children is in

1553.

and in any wise to be retained in the Church.†

XXIX.

*Of the Lord's Supper.*

The Supper of the Lord is not only a sign of the love that Christians ought to have among themselves one to another, but rather it is a Sacrament of our redemption by Christ's death, insomuch that to such as rightly, worthily, and with faith receive the same, the bread which we break, is a communion of the body of Christ. Likewise the cup of blessing is a communion of the blood of Christ.

Transubstantiation, or the change of the substance of bread and wine into the substance of Christ's body and blood cannot be proved by Holy Writ, but is repugnant to the plain words of Scripture, [ ] and hath given occasion to many superstitions.

Forasmuch as the truth of man's nature requireth, that the body of one and the self same man cannot be at one time in divers places, but must needs be in some one certain place: therefore the body of Christ cannot be present at one time in many and diverse places, and because (as Holy Scripture doth teach) Christ was taken up into heaven, and there shall continue unto the end of the world, a faithful man ought not either to believe or openly to confess the real and bodily presence (as they term it) of Christ's flesh and blood, in

1571.

anywise to be retained in the Church, as most agreeable with the institution of Christ.

XXVIII.

*Of the Lord's Supper.*

The Supper of the Lord is not only a sign of the love that Christians ought to have among themselves one to another; but rather it is a Sacrament of our redemption by Christ's death. Insomuch that to such as rightly, worthily, and with faith receive the same the bread which we break is a partaking of the body of Christ, and likewise the cup of blessing is a partaking of the blood of Christ.

Transubstantiation (or the change of the substance of bread and wine) in the Supper of the Lord, cannot be proved by holy writ, but is repugnant to the plain words of Scripture, overthroweth the nature of a Sacrament, and hath given occasion to many superstitions.

The body of Christ is given, taken, and eaten in the Supper only after an heavenly and spiritual manner. And the mean whereby the body of Christ is received and eaten in the Supper, is faith.

The Sacrament of the Lord's Supper was not by Christ's ordinance reserved, carried about, lifted up, or worshipped.

1553.

the Sacrament of the Lord's Supper.

The Sacrament of the Lord's Supper was not commanded by Christ's ordinance to be kept, carried about, lifted up, or worshipped.

1571.

## XXIX.

*Of the wicked which do not eat the body of Christ in the use of the Lord's Supper.*

The wicked, and such as be void of a lively faith, although they do carnally and visibly press with their teeth (as Saint Augustine saith) the Sacrament of the body and blood of Christ; yet in no wise are they partakers of Christ, but rather to their condemnation do eat and drink the sign or Sacrament of so great a thing. (a)

(a) The following sets forth the chief editions which respectively do or do not contain the 29th Article.

It is found in

1. The Latin edition of Reynold Wolfe, 1563, as authorized by the Queen.
2. The two English editions of Jugge and Cawood, 1571.
3. Several English editions from 1581 to 1627, and all subsequent copies.
4. The transcript made in 1637 examined and attested by a notary public, from the original copy of the Articles, as it was deposited in the registry of the See of Canterbury.

It is not found in

1. The Latin MS. of Archbishop Parker, which had been signed by himself and a large majority of the bishops on 29th January, 1562-3.
2. The English edition, as printed by Jugge and Cawood in 1563.
3. The English MS. signed by the bishops in convocation in 1571.
4. One Latin and one English edition by Jugge and Cawood in 1571.

And it appears in all editions, Latin and English, of and since 1571.



1553.

1571.

XXX.

*Of both kinds.*

The cup of the Lord is not to be denied to the lay people. For both the parts of the Lord's Sacrament, by Christ's ordinance and commandment, ought to be ministered to all Christian men alike.

XXX.

*Of the perfect oblation of Christ made upon the cross.*

The offering of Christ made once for ever, is the perfect redemption, the pacifying of God's displeasure, and satisfaction for all the sins of the whole world, both original and actual; and there is none other satisfaction for sin, but that alone. Wherefore the sacrifices of masses, in the which, it was commonly said, that the priest did offer Christ for the quick and the dead, to have remission of pain or †sin,† were forged fables, and dangerous deceits.

XXXI.

*Of the one oblation of Christ finished upon the Cross.*

The offering of Christ once made, is the perfect redemption, propitiation, and satisfaction for all the sins of the whole world, both original and actual, and there is none other satisfaction for sin, but that alone. Wherefore the sacrifices of masses, in the which it was commonly said that the priests did offer Christ for the quick and the dead, to have remission of pain or guilt, were blasphemous fables and dangerous deceits.

XXXI.

† *The state of single life is commanded to no man by the word of God.*

Bishops, priests, and deacons are not commanded to vow the state of single life without marriage, neither by God's law are they compelled to abstain from matrimony.†

XXXII.

*Of the marriage of Priests.*

Bishops, priests, and deacons are not commanded by God's law either to vow the estate of single life, or to abstain from marriage. Therefore it is lawful also for them, as for all other Christian men, to marry at their own discretion, as they shall judge the same to serve better to godliness.

1553.

XXXII.

*Excommunicate persons are to be avoided.*

That person, which by open denunciation of the Church is rightly cut off from the unity of the Church, and excommunicate, ought to be taken of the whole multitude of the faithful, as a heathen and publican, until he be openly reconciled by penance, and received into the Church by a judge that hath authority thereto.

XXXIII.

*Traditions of the Church.*

It is not necessary that traditions and ceremonies be in all places one, or utterly like. For at all times they have been diverse, and may be changed, according to the diversity of countries, [ ] and men's manners, so that nothing be ordained against God's Word.

Whosoever through his private judgment willingly and purposely doth openly break the traditions and ceremonies of the Church, which be not repugnant to the Word of God, and be ordained and approved by common authority, ought to be rebuked openly (that other may fear to do the like) as one that offendeth against the common order of the Church, and hurteth the authority of the magistrate, and woundeth the consciences of the weak brethren.

[

1571.

XXXIII.

*Of excommunicate persons, how they are to be avoided.*

That person which by open denunciation of the Church, is rightly cut off from the unity of the Church, and excommunicated, ought to be taken of the whole multitude of the faithful as a heathen and publican, until he be openly reconciled by penance, and received into the Church by a judge that hath authority thereto.

XXXIV.

*Of the traditions of the Church.*

It is not necessary that traditions and ceremonies be in all places one, or utterly like, for at all times they have been diverse, and may be changed according to the diversity of countries, times, and men's manners, so that nothing be ordained against God's Word. Whosoever through his private judgment, willingly and purposely doth openly break the traditions and ceremonies of the Church, which be not repugnant to the Word of God, and be ordained and approved by common authority, ought to be rebuked openly (that other may fear to do the like) as he that offendeth against the common order of the Church, and hurteth the authority of the magistrate, and woundeth the consciences of the weak brethren.

Every particular or national Church hath authority to ordain, change, and abolish cere-

1553.

1571.

] monies or rites of the Church ordained only by man's authority, so that all things be done to edifying.

XXXIV.

†Homilies.

The homilies of late given and set out by the king's authority, be godly and wholesome, containing doctrine to be received of all men, and therefore are to be read to the people diligently, distinctly, and plainly.†

XXXV.

Of Homilies.

The Second Book of Homilies, the several titles whereof we have joined under this article, doth contain a godly and wholesome doctrine, and necessary for these times, as doth the former book of Homilies, which were set forth in the time of Edward VI.; and therefore we judge them to be read in churches by the ministers diligently and distinctly, that they may be understood of the people.

*Of the names of the Homilies.*

1. Of the right use of the Church.
2. Against peril of idolatry.
3. Of repairing and keeping clean of churches.
4. Of good works, first of fasting.
5. Against gluttony and drunkenness.
6. Against excess of apparel.
7. Of prayer.
8. Of the place and time of prayer.
9. That common prayers and Sacraments ought to be ministered in a known tongue.
10. Of the reverent estimation of God's Word.
11. Of alms doing.
12. Of the Nativity of Christ.
13. Of the Passion of Christ.
14. Of the Resurrection of Christ.

1553.

1571.

15. Of the worthy receiving of the Sacrament of the body and blood of Christ.

16. Of the gifts of the Holy Ghost.

17. For the Rogation days.

18. Of the state of Matrimony.

19. Of repentance.

20. Against idleness.

21. Against rebellion.

## XXXV.

†*Of the Book of Prayers and Ceremonies of the Church of England.*

The book which of very late time was given to the Church of England by the king's authority, and the parliament, containing the manner and form of praying, and ministering the Sacraments in the Church of England, likewise also the book of ordering ministers of the church, set forth by the aforesaid authority, are godly, and in no point repugnant to the wholesome doctrine of the Gospel but agreeable thereunto, furthering and beautifying the same not a little, and therefore of all faithful members of the Church of England, and chiefly of the ministers of the word, they ought to be received, and allowed with all readiness of mind and thanksgiving, and to be commended to the people of God.†

## XXXVI.

*Of Civil Magistrates.*

†The king of England is supreme head in earth, next under

## XXXVI.

*Of consecration of bishops and ministers.*

The Book of Consecration of Archbishops and Bishops, and ordering of Priests and Deacons, lately set forth in the time of Edward VI., and confirmed at the same time by authority of parliament, doth contain all things necessary to such consecration and ordering; neither hath it any thing that of itself is superstitious or ungodly. And therefore, whosoever are consecrated or ordered according to the rites of that book, since the second year of the aforesaid King Edward, unto this time, or hereafter shall be consecrated or ordered according to the same rites, we decree all such to be rightly, orderly, and lawfully consecrated and ordered.

## XXXVII.

*Of the Civil Magistrates.*

The queen's majesty hath the chief power in this realm



1553.

Christ, of the Church of England and Ireland.† [ ]

The Bishop of Rome hath no jurisdiction in this realm of England.

The civil magistrate is ordained and allowed of God; therefore we must obey him, not only for fear of punishment, but also for conscience sake.

The civil laws may punish Christian men with death, for heinous and grievous offences.

It is lawful for Christians, at the commandment of the magistrate, to wear weapons, and to serve in lawful wars.

1571.

England, and other her dominions, unto whom the chief government of all estates of this realm, whether they be ecclesiastical or civil, in all causes doth appertain, and is not nor ought to be subject to any foreign jurisdiction.

Where we attribute to the queen's majesty the chief government, by which titles we understand the minds of some slanderous folks to be offended; we give not to our princes the ministering either of God's Word, or of Sacraments, the which thing the Injunctions also lately set forth by Elizabeth our Queen, doth most plainly testify: but that only prerogative which we see to have been given always to all godly princes in Holy Scriptures by God himself, that is, that they should rule all estates and degrees committed to their charge by God, whether they be ecclesiastical or temporal, and restrain with the civil sword the stubborn and evil doers.

The Bishop of Rome hath no jurisdiction in this realm of England.

The laws of the realm may punish Christian men with death, for heinous and grievous offences.

It is lawful for Christian men, at the commandment of the magistrate, to wear weapons, and serve in the wars.

XXXVII.

*Christian men's goods are not common.*

The riches and goods of Chris-

XXXVIII.

*Of Christian men's goods, which are not common.*

The riches and goods of Chris-

1553.

tians are not common, as touching the right title and possession of the same (as certain Anabaptists do falsely boast); notwithstanding every man ought of such things as he possesseth liberally to give alms to the poor, according to his ability.

## XXXVIII.

*Christian men may take an oath.*

As we confess that vain and rash swearing is forbid Christian men by our Lord Jesus Christ, and his Apostle James: so we judge that Christian religion doth not prohibit, but that a man may swear, when the magistrate requireth in a cause of faith and charity, so it be done (according to the prophets' teaching) in justice, judgment, and truth.

## XXXIX.

*The resurrection of the dead is not yet brought to pass.*

The resurrection of the dead is not as yet brought to pass, as though it only belonged to the soul, which by the grace of Christ is raised from the death of sin, but it is to be looked for at the last day; for then (as Scripture doth most manifestly testify) to all that be dead their own bodies, flesh, and bones shall be restored, that the whole man may (according to his works) have other reward, or punishment, as he hath lived virtuously or wickedly.

1571.

tians are not common, as touching the right, title, and possession of the same, as certain Anabaptists do falsely boast. Notwithstanding every man ought of such things as he possesseth, liberally to give alms to the poor, according to his ability.

## XXXIX.

*Of a Christian man's oath.*

As we confess that vain and rash swearing is forbidden Christian men by our Lord Jesus Christ, and James his Apostle: So we judge that Christian religion doth not prohibit, but that a man may swear when the magistrate requireth, in a cause of faith and charity, so it be done according to the prophets' teaching, in justice, judgment, and truth.

*The Ratification.*

This Book of Articles before rehearsed, is again approved, and allowed to be holden and executed within the realm, by the assent and consent of our sovereign lady Elizabeth, by the grace of God, of England, France, and Ireland queen, defender of the faith, &c. Which articles were deliberately read, and confirmed again by the subscription of the hands of the archbishop and bishops of the upper house, and by the subscription of the whole clergy in the nether house in their convocation in the year of our Lord God 1571.

1553.

XL.

*The souls of them that depart this life do neither die with the bodies, nor sleep idly.*

They which say, that the souls of such as depart hence do sleep, being without all sense, feeling, or perceiving, until the day of judgment, or affirm that the souls die with the bodies, and at the last day shall be raised up with the same, do utterly dissent from the right belief declared to us in Holy scripture.

XLI.

*Heretics called Millenarii.*

They that go about to renew the fable of heretics called Millenarii, be repugnant to Holy Scripture, and cast themselves headlong into a Jewish dotage.

XLII.

*All men shall not be saved at the length.*

They also are worthy of condemnation, who endeavour at this time to restore the dangerous opinion, that all men, be they never so ungodly, shall at length be saved, when they have suffered pains for their sins a certain time appointed by God's justice.

1571.

1. Of faith in the Trinity.
2. Of Christ the son of God.
3. Of his going down into hell.
4. Of his resurrection.
5. Of the Holy Ghost.
6. Of the sufficiency of the Scripture.
7. Of the Old Testament.
8. Of the three creeds.
9. Of original sin.
10. Of free will.
11. Of justification.
12. Of good works.
13. Of works before justification.
14. Of works of supererogation.
15. Of Christ alone without sin.
16. Of sin after Baptism.
17. Of predestination and election.
18. Of obtaining salvation by Christ.
19. Of the Church.
20. Of the authority of the Church.
21. Of the authority of general councils.
22. Of purgatory.
23. Of ministering in the congregation.
24. Of speaking in the congregation.
25. Of the Sacraments.
26. Of the unworthiness of the ministers.
27. Of Baptism.
28. Of the Lord's Supper.
29. Of the wicked which eat not the body of Christ.
30. Of both kinds.
31. Of Christ's one oblation.
32. Of the marriage of priests.
33. Of excommunicate persons.

1553.

1571.

34. Of traditions of the Church.

35. Of homilies.

36. Of consecration of ministers.

37. Of civil magistrates.

38. Of Christian men's goods.

39. Of a Christian man's oath.

40. Of the ratification.





CHAPTER V.

CONSTITUTIONS AND CANONS OF THE  
CHURCH OF ENGLAND.

1. *The King's Supremacy over the Church of England, in Causes Ecclesiastical, to be maintained.*



AS our duty to the king's most excellent majesty requireth, we first decree and ordain, That the Archbishop of Canterbury, (from time to time,) all bishops of this province, all deans, archdeacons, parsons, vicars, and all other ecclesiastical persons, shall faithfully keep and observe, and (as much as in them lieth) shall cause to be observed and kept of others, all and singular laws and statutes, made for restoring to the crown of this kingdom the ancient jurisdiction over the state ecclesiastical, and abolishing of all foreign power repugnant to the same. Furthermore, all ecclesiastical persons, having cure of souls, and all other preachers, and readers of divinity lectures, shall, to the uttermost of their wit, knowledge, and learning, purely and sincerely, without any colour or dissimulation, teach, manifest, open, and declare, four times every year at the least, in their sermons and other collations and lectures, that all usurped and foreign power (forasmuch as the same hath no establishment nor ground by the law of God) is for the most just causes taken away and abolished; and that therefore no manner of obedience, or subjection, within his majesty's realms and dominions, is due unto any such foreign power, but that the king's power, within his realms of England, Scotland, and Ireland, and all other his dominions and countries, is the highest power under God: to whom all men, as well inhabitants, as born within the

same, do by God's laws owe most loyalty and obedience, afore and above all other powers and potentates in the earth.

2. *Impugners of the King's Supremacy censured.*

Whosoever shall hereafter affirm, that the king's majesty hath not the same authority in causes ecclesiastical, that the godly kings had amongst the Jews and Christian emperors of the primitive church; or impeach any part of his regal supremacy in the said causes restored to the crown, and by the laws of this realm therein established; let him be excommunicated *ipso facto*, and not restored, but only by the archbishop, after his repentance, and public revocation of those his wicked errors.

3. *The Church of England a true and Apostolical Church.*

Whosoever shall hereafter affirm, that the Church of England, by law established under the king's majesty, is not a true and Apostolical Church, teaching and maintaining the doctrine of the apostles; let him be excommunicated *ipso facto*, and not restored, but only by the archbishop, after his repentance and public revocation of this his wicked error.

4. *Impugners of the Public Worship of God established in the Church of England, censured.*

Whosoever shall hereafter affirm, that the form of God's worship in the Church of England, established by law, and contained in the Book of Common Prayer and Administration of Sacraments, is a corrupt, superstitious, or unlawful worship of God, or containeth any thing in it that is repugnant to the Scriptures; let him be excommunicated *ipso facto*, and not restored, but by the bishop of the place, or archbishop, after his repentance, and public revocation of such his wicked errors.

5. *Impugners of the Articles of Religion, established in the Church of England, censured.*

Whosoever shall hereafter affirm, that any of the nine and thirty articles agreed upon by the archbishops and bishops of both provinces, and the whole clergy, in the convocation holden at London, in the year of our Lord God one thousand five hundred sixty-two, for avoiding diversities of opinions, and for the establishing of consent touching true religion, are in any part superstitious or erro-

neous, or such as he may not with a good conscience subscribe unto; let him be excommunicated *ipso facto*, and not restored, but only by the archbishop, after his repentance, and public revocation of such his wicked errors.

6. *Impugners of the Rites and Ceremonies established in the Church of England, censured.*

Whosoever shall hereafter affirm, that the rites and ceremonies of the Church of England by law established are wicked, antichristian, or superstitious, or such as, being commanded by lawful authority, men, who are zealously and godly affected, may not with any good conscience approve them, use them, or as occasion requireth, subscribe unto them; let him be excommunicated *ipso facto*, and not restored until he repent, and publicly revoke such his wicked errors.

7. *Impugners of the Government of the Church of England by Archbishops, Bishops, &c., censured.*

Whosoever shall hereafter affirm, that the government of the Church of England under his majesty by archbishops, bishops, deans, archdeacons, and the rest that bear office in the same, is antichristian, and repugnant to the Word of God; let him be excommunicated *ipso facto*, and so continue until he repent, and publicly revoke such his wicked errors.

8. *Impugners of the Form of consecrating and ordering Archbishops, Bishops, &c., in the Church of England, censured.*

Whosoever shall hereafter affirm or teach, that the form and manner of making and consecrating bishops, priests, and deacons, containeth any thing in it that is repugnant to the Word of God, or that they who are made bishops, priests, or deacons in that form, are not lawfully made, nor ought to be accounted, either by themselves or others, to be truly either bishops, priests, or deacons, until they have some other calling to those divine offices; let him be excommunicated *ipso facto*, not to be restored until he repent, and publicly revoke such his wicked errors.

9. *Authors of Schism in the Church of England, censured.*

Whosoever shall hereafter separate themselves from the communion of saints, as it is approved by the apostles' rules, in the Church of England, and combine themselves together in a new brotherhood,

accounting the Christians, who are conformable to the doctrine, government, rites, and ceremonies of the Church of England, to be profane, and unmeet for them to join with in Christian profession; let them be excommunicated *ipso facto*, and not restored but by the archbishop, after their repentance, and public revocation of such their wicked errors.

10. *Maintainers of Schismatics in the Church of England, censured.*

Whosoever shall hereafter affirm, that such ministers, as refuse to subscribe to the form and manner of God's worship in the Church of England, prescribed in the Communion Book, and their adherents, may truly take unto them the name of another Church not established by law, and dare presume to publish it, that this their pretended Church hath of long time groaned under the burden of certain grievances imposed upon it, and upon the members thereof before mentioned, by the Church of England, and the orders and constitutions therein by law established; let them be excommunicated, and not restored until they repent, and publicly revoke such their wicked errors.

11. *Maintainers of Conventicles, censured.*

Whosoever shall hereafter affirm or maintain, that there are within this realm other meetings, assemblies, or congregations of the king's born subjects, than such as by the laws of this land are held and allowed, which may rightly challenge to themselves the name of true and lawful churches; let him be excommunicated, and not restored but by the archbishop, after his repentance, and public revocation of such his wicked errors.

12. *Maintainers of Constitutions made in Conventicles, censured.*

Whosoever shall hereafter affirm, that it is lawful for any sort of ministers and lay-persons, or of either of them, to join together, and make rules, orders, or constitutions, in causes ecclesiastical, without the king's authority, and shall submit themselves to be ruled and governed by them; let them be excommunicated *ipso facto*, and not be restored until they repent, and publicly revoke those their wicked and Anabaptistical errors.



OF DIVINE SERVICE, AND ADMINISTRATION OF THE SACRAMENTS.

13. *Due Celebration of Sundays and Holy-days.*

All manner of persons within the Church of England shall from henceforth celebrate and keep the Lord's Day, commonly called Sunday, and other holy-days, according to God's holy will and pleasure, and the orders of the Church of England prescribed in that behalf; that is, in hearing the word of God read and taught; in private and public prayers; in acknowledging their offences to God, and amendment of the same; in reconciling themselves charitably to their neighbours, where displeasure hath been; in oftentimes receiving the Communion of the body and blood of Christ; in visiting of the poor and sick; using all godly and sober conversation.

14. *The Prescript Form of Divine Service to be used on Sundays and Holy-days.*

The Common Prayer shall be said or sung distinctly and reverently upon such days as are appointed to be kept holy by the Book of Common Prayer, and their eves, and at convenient and usual times of those days, and in such place of every church as the bishop of the diocese, or ecclesiastical ordinary of the place, shall think meet for the largeness or straitness of the same, so as the people may be most edified. All ministers likewise shall observe the orders, rites, and ceremonies prescribed in the Book of Common Prayer, as well in reading the Holy Scriptures, and saying of prayers, as in administration of the Sacraments, without either diminishing in regard of preaching, or in any other respect, or adding anything in the matter or form thereof.

15. *Litany to be read on Wednesdays and Fridays.(c)*

The Litany shall be said or sung when, and as it is set down in the Book of Common Prayer, by the parsons, vicars, ministers, or curates, in all cathedral, collegiate, parish churches and chapels, in some convenient place, according to the discretion of the bishop of the diocese, or ecclesiastical ordinary of the place. And that we may speak more particularly, upon Wednesdays and Fridays weekly, though they be not holy-days, the minister, at the accustomed hours of service, shall resort to the church or chapel,

(c) *Ante*, p. 260.

and, warning being given to the people by tolling of a bell, shall say the Litany prescribed in the Book of Common Prayer: whereunto we wish every householder dwelling within half a mile of the church to come, or send one at least of his household, fit to join with the minister in prayers.

16. *Colleges to use the prescript Form of Divine Service.*

In the whole Divine Service, and administration of the Holy Communion, in all colleges and halls in both universities, the order, form, and ceremonies shall be duly observed, as they are set down and prescribed in the Book of Common Prayer, without any omission or alteration.

17. *Students in Colleges to wear Surplices in time of Divine Service.*

All masters and fellows of colleges or halls, and all the scholars and students in either of the universities, shall in their churches and chapels, upon all Sundays, holy-days, and their eves, at the time of Divine Service, wear surplices according to the order of the Church of England: and such as are graduates shall agreeably wear with their surplices such hoods as do severally appertain unto their degrees.

18. *A Reverence and Attention to be used within the Church in time of Divine Service. (d)*

In the time of Divine Service, and of every part thereof all due reverence is to be used; for it is according to the Apostle's rule, *Let all things be done decently and according to order*; answerably to which decency and order, we judge these our directions following: No man shall cover his head in the church or chapel in the time of Divine Service, except he have some infirmity; in which case let him wear a night-cap or coif. All manner of persons then present shall reverently kneel upon their knees, when the general confession, litany, and other prayers are read; and shall stand up at the saying of the Belief according to the rules in that behalf prescribed in the Book of Common Prayer: and likewise when in time of Divine Service the Lord Jesus shall be mentioned, due and lowly reverence shall be done by all persons present, as it hath been accustomed; testifying by these outward ceremonies and gestures, their inward humility, Christian resolution, and due acknowledgment that the Lord Jesus Christ, the true

(d) *Ante*, p. 177.

eternal Son of God, is the only Saviour of the world, in whom alone all the mercies, graces, and promises of God to mankind, for this life, and the life to come, are fully and wholly comprised. None, either man, woman, or child, of what calling soever, shall be otherwise at such times busied in the Church, than in quiet attendance to hear, mark, and understand that which is read, preached, or ministered; saying in their due places audibly with the minister, the Confession, the Lord's Prayer, and the Creed; and making such other answers to the public prayers, as are appointed in the Book of Common Prayer; neither shall they disturb the service or sermon, by walking or talking, or any other way; nor depart out of the church during the time of service or sermon, without some urgent or reasonable cause.

19. *Loiterers not to be suffered near the Church in time of Divine Service. (e)*

20. *Bread and Wine to be provided against every Communion. (f)*

The churchwardens of every parish, against the time of every Communion, shall, at the charge of the parish, with the advice and direction of the minister, provide a sufficient quantity of fine white bread, and of good and wholesome wine, for the number of communicants that shall from time to time receive there: which wine we require to be brought to the Communion-table in a clean and sweet standing pot or stoop of pewter, if not of purer metal.

21. *The Communion to be Thrice a Year received.*

In every parish church and chapel, where sacraments are to be administered within this realm, the Holy Communion shall be administered by the parson, vicar, or minister, so often, and at such times as every parishioner may communicate at the least thrice in the year (whereof the feast of Easter to be one), according as they are appointed by the Book of Common Prayer. Provided, that every minister, as oft as he administereth the Communion, shall first receive that sacrament himself. Furthermore, no bread or wine newly brought shall be used; but first the words of institution shall be rehearsed, when the said bread and wine be present upon the Communion-table. Likewise, the minister shall deliver both the bread and the wine to every communicant severally.

(e) *Ante*, pp. 269, 271.

(f) *Ante*, pp. 194, 237.



22. *Warning to be given beforehand for the Communion.*

Whereas every lay person is bound to receive the Holy Communion thrice every year, and many notwithstanding do not receive that Sacrament once in a year ; we do require every minister to give warning to his parishioners publicly in the church at Morning Prayer, the Sunday before every time of his administering that Holy Sacrament, for their better preparation of themselves : which said warning we enjoin the parishioners to accept and obey, under the penalty and danger of the law.

23. *Students in Colleges to receive the Communion Four times a Year.*

In all colleges and halls within both the universities, the masters and fellows, such especially as have any pupils, shall be careful that all their said pupils, and the rest that remain amongst them, be well brought up and thoroughly instructed in points of religion, and that they do diligently frequent public service and sermons, and receive the Holy Communion ; which we ordain to be administered in all such colleges and halls the first or second Sunday of every month, requiring all the said masters, fellows, and scholars, and all the rest of the students, officers, and all other the servants there, so to be ordered, that every one of them shall communicate four times in the year at the least, kneeling reverently and decently upon their knees, according to the order of the Communion Book prescribed in that behalf.

24. *Copes to be worn in Cathedral Churches by those that administer the Communion. (g)*

In all cathedral and collegiate churches the Holy Communion shall be administered upon principal feast-days, sometimes by the bishop, if he be present, and sometimes by the dean, and at sometimes by a canon or prebendary, the principal minister using a decent cope, and being assisted with the gospeller and epistler agreeably according to the advertisements published *Anno 7. Eliz.* The said communion to be administered at such times, and with such limitation, as is specified in the Book of Common Prayer. Provided, that no such limitation by any construction shall be allowed of, but that all deans, wardens, masters or heads of cathedral



and collegiate churches, prebendaries, canons, vicars, petty canons, singing men, and all others of the foundation, shall receive the Communion four times yearly at the least.

*25. Surplices and Hoods to be worn in Cathedral Churches, when there is no Communion.*

In the time of Divine Service and prayers in all cathedral and collegiate churches, when there is no Communion, it shall be sufficient to wear surplices; saving that all deans, masters, and heads, of collegiate churches, canons, and prebendaries, being graduates, shall daily, at the times both of prayer and preaching, wear with their surplices such hoods as are agreeable to their degrees.

*26. Notorious offenders not to be admitted to the Communion.*

No minister shall in any wise admit to the receiving of the Holy Communion, any of his cure or flock, which be openly known to live in sin notorious, without repentance; nor any who have maliciously and openly contended with their neighbours, until they shall be reconciled; nor any churchwarden or sidemen, who, having taken their oaths to present to their ordinaries all such public offences as they are particularly charged to inquire of in their several parishes, shall (notwithstanding their said oaths, and that their faithful discharging of them is the chief means whereby public sins and offences may be reformed and punished) wittingly and willingly, desperately and irreligiously, incur the horrible crime of perjury either in neglecting or in refusing to present such of the said enormities and public offences, as they know themselves to be committed in their said parishes, or are notoriously offensive to the congregation there; although they be urged by some of their neighbours, or by their minister, or by their ordinary himself, to discharge their consciences by presenting of them, and not to incur so desperately the said horrible sin of perjury.

*27. Schismatics not to be admitted to the Communion.*

No minister, when he celebrateth the Communion, shall wittingly administer the same to any but to such as kneel, under pain of suspension; nor, under the like pain, to any that refuse to be present at public prayers according to the orders of the Church of England; nor to any that are common and notorious depravers of the Book of Common Prayer and administration of the Sacraments,

and of the orders, rites, and ceremonies therein prescribed, or of anything that is contained in any of the articles agreed upon in the convocation, one thousand five hundred sixty and two, or of anything contained in the book of ordering the priests and bishops; or to any that have spoken against and depraved his majesty's sovereign authority in causes ecclesiastical; except every such person shall first acknowledge to the minister, before the churchwardens, his repentance for the same, and promise by word (if he cannot write) that he will do so no more; and except (if he can write) he shall first do the same under his hand-writing, to be delivered to the minister, and by him sent to the bishop of the diocese, or ordinary of the place. Provided, that every minister so repelling any, as is specified either in this or in the next precedent constitution, shall, upon complaint, or being required by the ordinary, signify the cause thereof unto him, and therein obey his order and direction.

28. *Strangers not to be admitted to the Communion.*

The churchwardens or questmen and their assistants, shall mark, as well as the minister, whether all and every of the parishioners come so often every year to the Holy Communion, as the laws and our constitutions do require; and whether any strangers come often and commonly from other parishes to their church; and shall show their minister of them, lest perhaps they be admitted to the Lord's Table amongst others, which they shall forbid; and remit such home to their own parish churches and ministers, there to receive the Communion with the rest of their own neighbours.

29. *Fathers not to be Godfathers in Baptism, and Children not Communicants. (b)*

30. *The Lawful Use of the Cross in Baptism explained. (i)*

We are sorry that his majesty's most princely care and pains taken in the conference at Hampton Court, amongst many other points, touching this one of the cross in Baptism, hath taken no better effect with many, but that still the use of it in Baptism is so greatly stuck at and impugned. For the further declaration therefore of the true use of this ceremony, and for the removing all such scruple as might any ways trouble the consciences of

them who are indeed rightly religious, following the royal steps of our most worthy king, because he therein followeth the rules of the Scriptures, and the practice of the primitive Church; we do commend to all the true members of the Church of England these our directions and observations ensuing.

First, it is to be observed, that although the Jews and Ethnicks derided both the apostles and the rest of the Christians, for preaching and believing in him who was crucified upon the cross; yet all, both apostles and Christians, were so far from being discouraged from their profession by the ignominy of the cross, as they rather rejoiced and triumphed in it. Yea, the Holy Ghost by the mouths of the apostles did honour the name of the cross (being hateful among the Jews) so far, that under it he comprehended not only Christ crucified, but the force, effects, and merits of his death and passion, with all the comforts, fruits, and promises, which we receive or expect thereby.

Secondly, the honour and dignity of the name of the cross begat a reverend estimation even in the apostles' times (for aught that is known to the contrary) of the sign of the cross which the Christians shortly after used in all their actions: thereby making an outward show and profession, even to the astonishment of the Jews, that they were not ashamed to acknowledge him for their Lord and Saviour, who died for them upon the cross. And this sign they did not only use themselves with a kind of glory, when they met with any Jews, but signed therewith their children when they were christened, to dedicate them by that badge to his service, whose benefits bestowed upon them in Baptism the name of the cross did represent. And this use of the sign of the cross in Baptism was held in the primitive Church, as well by the Greeks as the Latins, with one consent and great applause. At what time, if any had opposed themselves against it, they would certainly have been censured as enemies of the name of the cross, and consequently of Christ's merits, the sign whereof they could no better endure. This continual and general use of the sign of the cross is evident by many testimonies of the ancient fathers.

Thirdly, it must be confessed, that in process of time the sign of the cross was greatly abused in the Church of Rome, especially after that corruption of popery had once possessed it. But the abuse of a thing doth not take away the lawful use of it. Nay, so far was it from the purpose of the Church of England to forsake and reject the Churches of Italy, France, Spain, Germany, or any



such like Churches, in all things which they held and practised, that, as the Apology of the Church of England confesseth, it doth with reverence retain those ceremonies, which doth neither endamage the Church of God, nor offend the minds of sober men; and only departed from them in those particular points, wherein they were fallen both from themselves in their ancient integrity, and from the Apostolical Churches, which were their first founders. In which respect, amongst some other very ancient ceremonies, the sign of the cross in baptism hath been retained in this Church, both by the judgment and practice of those reverend fathers and great divines in the days of King Edward the Sixth, of whom some constantly suffered for the profession of the truth; and others being exiled in the time of Queen Mary, did after their return, in the beginning of the reign of our late dread sovereign, continually defend and use the same. This resolution and practice of our Church hath been allowed and approved by the censure upon the Communion Book in King Edward the Sixth's days, and by the harmony of confessions of later years: because indeed the use of this sign in baptism was ever accompanied here with such sufficient cautions and exceptions against all Popish superstition and error, as in the like cases are either fit or convenient.

First, the Church of England, since the abolishing of Popery, hath ever held and taught, and so doth hold and teach still, that the sign of the cross used in baptism is no part of the substance of that sacrament: for when the minister, dipping the infant in water, or laying water upon the face of it, (as the manner also is,) hath pronounced these words, *I baptize thee in the name of the Father, and of the Son, and of the Holy Ghost*, the infant is fully and perfectly baptized. So as the sign of the cross being afterwards used, doth neither add any thing to the virtue and perfection of baptism, nor being omitted doth detract any thing from the effect and substance of it.

Secondly, it is apparent in the Communion Book, that the infant baptized is, by virtue of baptism, before it be signed with the sign of the cross, received into the congregation of Christ's flock, as a perfect member thereof, and not by any power ascribed unto the sign of the cross. So that for the very remembrance of the cross, which is very precious to all them that rightly believe in Jesus Christ, and in the other respects mentioned, the Church of England hath retained still the sign of it in baptism; following therein the primitive and apostolical Churches, and accounting it a lawful out-



ward ceremony and honourable badge, whereby the infant is dedicated to the service of Him that died upon the cross, as by the words used in the Book of Common Prayer it may appear.

Lastly, the use of the sign of the cross in baptism, being thus purged from all popish superstition and error, and reduced in the Church of England to the primary institution of it, upon those true rules of doctrine concerning things indifferent, which are consonant to the Word of God and the judgment of all the ancient fathers, we hold it the part of every private man, both minister and other, everently to retain the true use of it prescribed by public authority: considering that things of themselves indifferent do in some sort alter their natures, when they are either commanded or forbidden by a lawful magistrate; and may not be omitted at every man's pleasure, contrary to the law, when they be commanded, nor used when they are prohibited.

MINISTERS, THEIR ORDINATION, FUNCTION, AND CHARGE.

31. *Four solemn Times appointed for the making of Ministers.*

Forasmuch as the ancient fathers of the Church, led by example of the apostles, appointed prayers and fasts to be used at the solemn ordering of ministers; and to that purpose allotted certain times, in which only sacred orders might be given or conferred: we, following their holy and religious example, do constitute and decree, that no deacons or ministers be made and ordained, but only upon the Sundays immediately following *Jejunia quatuor temporum*, commonly called *Ember Weeks*, appointed in ancient time for prayer and fasting, (purposely for this cause at their first institution,) and so continued at this day in the Church of England: and that this be done in the cathedral or parish church where the bishop resideth, and in the time of Divine Service, in the presence not only of the archdeacon, but of the dean and two prebendaries at the least, or (if they shall happen by any lawful cause to be let or hindered) in the presence of four other grave persons, being masters of arts at the least, and allowed for public preachers.

32. *None to be made Deacon and Minister both in one Day.*

The office of deacon being a step or degree to the ministry, according to the judgment of the ancient fathers, and the practice of the primitive Church; we do ordain and appoint, that hereafter no

bishop shall make any person, of what qualities or gifts soever, a deacon and a minister both together upon one day; but that the order in that behalf prescribed in the book of making and consecrating bishops, priests, and deacons, be strictly observed. Not that always every deacon should be kept from the ministry for a whole year, when the bishop shall find good cause to the contrary; but that there being now four times appointed in every year for the ordination of deacons and ministers, there may ever be some time of trial of their behaviour in the office of deacon, before they be admitted to the order of priesthood.

33. *The titles of such as are to be made Ministers.*

It hath been long since provided by many decrees of the ancient fathers, that none should be admitted either deacon or priest, who had not first some certain place where he might use his function. According to which examples we do ordain, that henceforth no person shall be admitted into sacred orders, except he shall at that time exhibit to the bishop of whom he desireth imposition of hands, a presentation of himself to some ecclesiastical preferment then void in that diocese; or shall bring to the said bishop a true and undoubted certificate, that either he is provided of some church within the said diocese, where he may attend the cure of souls, or of some minister's place vacant, either in the cathedral church of that diocese, or in some other collegiate church therein also situate, where he may execute his ministry; or that he is a fellow, or in right as a fellow, or to be a conduct or chaplain in some college in Cambridge or Oxford; or except he be a master of arts of five years' standing, that liveth of his own charge in either of the universities; or except by the bishop himself, that doth ordain him minister, he be shortly after to be admitted either to some benefice or curateship then void. And if any bishop shall admit any person into the ministry, that hath none of these titles as is aforesaid, then he shall keep and maintain him with all things necessary, till he do prefer him to some ecclesiastical living. And if the said bishop shall refuse so to do, he shall be suspended by the archbishop, being assisted with another bishop, from giving of orders by the space of a year.

34. *The quality of such as are to be made Ministers.*

No bishop shall henceforth admit any person into sacred orders, which is not of his own diocese, except he be either of one of the

universities of this realm, or except he shall bring letters dismissory (so termed) from the bishop of whose diocese he is ; and desiring to be a deacon, is three and twenty years old ; and to be a priest, four and twenty years complete ; and hath taken some degree of school in either of the said universities ; or at the least, except he be able to yield an account of his faith in Latin, according to the Articles of Religion approved in the synod of the bishops and clergy of this realm, one thousand five hundred sixty and two, and to confirm the same by sufficient testimonies out of the Holy Scriptures ; and except moreover he shall then exhibit letters testimonial of his good life and conversation, under the seal of some college of Cambridge or Oxford, where before he remained, or of three or four grave ministers, together with the subscription and testimony of other credible persons, who have known his life and behaviour by the space of three years next before.

35. *The Examination of such as are to be made Ministers. (k)*

The bishop, before he admit any person to holy orders, shall diligently examine him in the presence of those ministers that shall assist him at the imposition of hands ; and if the said bishop have any lawful impediment, he shall cause the said ministers carefully to examine every such person so to be ordered. Provided, that they who shall assist the bishop in examining and laying on of hands, shall be of his cathedral church, if they may conveniently be had, or other sufficient preachers of the same diocese, to the number of three at the least ; and if any bishop or suffragan shall admit any to sacred orders who is not so qualified and examined, as before we have ordained, the archbishop of his province having notice thereof, and being assisted therein by one bishop, shall suspend the said bishop or suffragan so offending, from making either deacons or priests for the space of two years.

36. *Subscription required of such as are to be made Ministers. (l)*

No person shall hereafter be received into the ministry, nor either by institution or collation admitted to any ecclesiastical living, nor suffered to preach, to catechise, or to be a lecturer or reader of divinity, in either university, or in any cathedral or collegiate church, city, or market-town, parish church, chapel, or in any other place within this realm, except he be licensed either

(k) *Ante*, p. 29.

(l) *Ibid.*



by the archbishop, or by the bishop of the diocese, where he is to be placed, under their hands and seals, or by one of the two universities under their seal likewise; and except he shall first subscribe to these three articles following in such manner and sort as we have here appointed.

I. That the king's majesty, under God, is the only supreme governor of this realm, and of all other his highness's dominions and countries, as well in all spiritual or ecclesiastical things or causes, as temporal; and that no foreign prince, person, prelate, state, or potentate hath, or ought to have, any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within his majesty's said realms, dominions, and countries.

II. That the Book of Common Prayer, and of ordering of bishops, priests, and deacons, containeth in it nothing contrary to the Word of God, and that it may lawfully so be used; and that he himself will use the form in the said book prescribed, in public prayer, and administration of the sacraments, and none other.

III. That he alloweth the Book of Articles of Religion agreed upon by the archbishops and bishops of both provinces, and the whole clergy in the convocation holden at London in the year of our Lord God one thousand five hundred sixty and two; and that he acknowledgeth all and every the articles therein contained, being in number nine and thirty, besides the ratification, to be agreeable to the Word of God.

To these three articles whosoever will subscribe he shall, for the avoiding of all ambiguities, subscribe in this order and form of words, setting down both his christian and surname, viz. *I N. N. do willingly and ex animo subscribe to these three articles above mentioned, and to all things that are contained in them.* And if any bishop shall ordain, admit, or license any, as is aforesaid, except he first have subscribed in manner and form as here we have appointed, he shall be suspended from giving of orders and licenses to preach for the space of twelve months. But if either of the universities shall offend therein, we leave them to the danger of the law, and his majesty's censure.

### *37. Subscription before the Diocesan.*

None licensed, as is aforesaid, to preach, read, lecture, or catechise, coming to reside in any diocese, shall be permitted there to preach, read, lecture, catechise, or minister the Sacraments, or to execute any other ecclesiastical function, by what authority soever



he be thereunto admitted, unless he first consent and subscribe to the three articles before mentioned, in the presence of the bishop of the diocese, wherein he is to preach, read, lecture, catechise, or administer the Sacraments, as aforesaid.

*38. Revolters after Subscription censured.*

If any minister, after he hath once subscribed to the said three articles, shall omit to use the form of prayer, or any of the orders of ceremonies prescribed in the Communion Book, let him be suspended; and if after a month he do not reform and submit himself, let him be excommunicated; and then if he shall not submit himself within the space of another month, let him be deposed from the ministry.

*39. Cautions for Institution of Ministers into Benefices.*

No bishop shall institute any to a benefice, who hath been ordained by any other bishop, except he first show unto him his letters of orders, and bring him a sufficient testimony of his former good life and behaviour, if the bishop shall require it; and lastly, shall appear, on due examination, to be worthy of his ministry.

*40. An Oath against Simony at Institution into Benefices.*

To avoid the detestable sin of simony, because buying and selling of spiritual and ecclesiastical functions, offices, promotions, dignities, and livings, is execrable before God; therefore the archbishop, and all and every bishop or bishops, and any other person or persons, having authority to admit, institute, collate, instal, or to confirm the election of any archbishop, bishop, or other person or persons, to any spiritual or ecclesiastical function, dignity, promotion, title, office, jurisdiction, place, or benefice with cure or without cure, or to any ecclesiastical living whatsoever, shall, before every such admission, institution, collation, installation, or confirmation of election, respectively minister to every person hereafter to be admitted, instituted, collated, installed, or confirmed in or to any archbishopric, bishopric, or other spiritual or ecclesiastical function, dignity, promotion, title, office, jurisdiction, place, or benefice with cure or without cure, or in or to any ecclesiastical living whatsoever, this oath, in manner and form following, the same to be taken by every one whom it concerneth in his own person, and not by a proctor: *I N. N. do swear, that I have made no simoniacal payment,*

*contract, or promise directly or indirectly, by myself or by any other, to my knowledge, or with my consent, to any person or persons whatsoever, for or concerning the procuring and obtaining of this ecclesiastical dignity, place, preferment, office, or living (respectively and particularly naming the same whereunto he is to be admitted, instituted, collated, installed, or confirmed), nor will at any time hereafter perform or satisfy any such kind of payment, contract, or promise, made by any other without my knowledge or consent: So help me God, through Jesus Christ.*

41. *Licences for plurality of Benefices limited, and Residence enjoined.*

No licence or dispensation for the keeping of more benefices with cure than one shall be granted to any, but such only as shall be thought very well worthy for his learning, and very well able and sufficient to discharge his duty; that is, who shall have taken the degree of a master of arts at the least in one of the universities of this realm, and be a public and sufficient preacher licensed. Provided always, That he be by a good and sufficient caution bound to make his personal residence in each his said benefices for some reasonable time in every year; and that the said benefices be not more than thirty miles distant asunder; and lastly, that he have under him in the benefice, where he doth not reside, a preacher lawfully allowed, that is able sufficiently to teach and instruct the people.

42. *Residence of Deans in their Churches.*

Every dean, master, or warden, or chief governor of any cathedral or collegiate church shall be resident in his said cathedral or collegiate church fourscore and ten days *conjunctim* or *divisim* in every year at the least, and then shall continue there in preaching the Word of God, and keeping good hospitality, except he shall be otherwise let with weighty and urgent causes, to be approved by the bishop of the diocese, or in any other lawful sort dispensed with. And when he is present, he, with the rest of the canons or prebendaries resident, shall take special care that the statutes and laudable customs of their church (not being contrary to the Word of God, or prerogative royal), the statutes of this realm being in force concerning ecclesiastical order, and all other constitutions now set forth and confirmed by his majesty's authority, and such as shall be lawfully enjoined by the bishop of the diocese in his visitation, according to the statutes and customs of

the same church, or the ecclesiastical laws of this realm, be diligently observed; and that the petty canons, vicars choral, and other ministers of their church, be urged to the study of the Holy Scriptures; and every one of them to have the New Testament not only in English, but also in Latin.

43. *Deans and Prebendaries to preach during their Residence.*

The dean, master, warden, or chief governor, prebendaries, and canons in every cathedral and collegiate church, shall not only preach there in their own persons so often as they are bound by law, statute, ordinance, or custom, but shall likewise preach in other churches of the same diocese where they are resident, and especially in those places whence they or their church receive any yearly rents or profits. And in case they themselves be sick, or lawfully absent, they shall substitute such licensed preachers to supply their turns, as by the bishop of the diocese shall be thought meet to preach in cathedral churches. And if any otherwise neglect or omit to supply his course, as is aforesaid, the offender shall be punished by the bishop, or by him or them to whom the jurisdiction of that church appertaineth, according to the quality of the offence.

44. *Prebendaries to be resident upon their Benefices.*

No prebendaries nor canons in cathedral or collegiate churches, having one or more benefices with cure, (and not being residentiaries in the same cathedral or collegiate churches,) shall under colour of their said prebends, absent themselves from their benefices with cure above the space of one month in the year, unless it be for some urgent cause, and certain time to be allowed by the bishop of the diocese. And such of the said canons and prebendaries, as by the ordinances of the cathedral or collegiate churches do stand bound to be resident in the same, shall so among themselves sort and proportion the times of the year, concerning residency to be kept in the said churches, as that some of them always shall be personally resident there; and that all those who be, or shall be, residentiaries in any cathedral or collegiate church, shall, after the days of their residency appointed by their local statutes or customs expired, presently repair to their benefices, or some one of them, or to some other charge where the law requireth their presence, here to discharge their duties according to the laws in that case



provided. And the bishop of the diocese shall see the same to be duly performed and put in execution.

45. *Beneficed Preachers, being resident upon their Livings, to preach every Sunday.*

Every beneficed man, allowed to be a preacher, and residing on his benefice, having no lawful impediment, shall in his own cure, or in some other church or chapel, where he may conveniently, near adjoining, (where no preacher is,) preach one sermon every Sunday of the year ; wherein he shall soberly and sincerely divide the word of truth, to the glory of God, and to the best edification of the people.

46. *Beneficed Men, not Preachers, to procure Monthly Sermons.*

Every beneficed man, not allowed to be a preacher, shall procure sermons to be preached in his cure once in every month at the least, by preachers lawfully licensed, if his living, in the judgment of the ordinary, will be able to bear it. And upon every Sunday, when there shall not be a sermon preached in his cure, he or his curate shall read some one of the homilies prescribed or to be prescribed by authority, to the intents aforesaid.

47. *Absence of beneficed Men to be supplied by Curates that are allowed Preachers.*

Every beneficed man, licensed by the laws of this realm, upon urgent occasions of other service, not to reside upon his benefice, shall cause his cure to be supplied by a curate that is a sufficient and licensed preacher, if the worth of the benefice will bear it. But whosoever hath two benefices shall maintain a preacher, licensed in the benefice where he doth not reside, except he preach himself at both of them usually.

48. *None to be Curates but allowed by the Bishop.*

No curate or minister shall be permitted to serve in any place without examination and admission of the bishop of the diocese, or ordinary of the place, having episcopal jurisdiction, in writing under his hand and seal, having respect to the greatness of the cure, and meetness of the party. And the said curates and ministers, if they remove from one diocese to another, shall not be by any means admitted to serve without testimony of the bishop of the diocese, or ordinary of the place, as aforesaid, whence they came, in writing,



of their honesty, ability, and conformity to the ecclesiastical laws of the Church of England. Nor shall any serve more than one church or chapel upon one day, except that chapel be a member of the parish church or united thereunto, and unless the said church or chapel, where such a minister shall serve in two places, be not able, in the judgment of the bishop or ordinary, as aforesaid, to maintain a curate.

*49. Ministers, not allowed Preachers, may not expound.*

No person whatsoever, not examined and approved by the bishop of the diocese, or not licensed, as is aforesaid, for a sufficient or convenient preacher, shall take upon him to expound in his own cure, or elsewhere, any Scripture or matter of doctrine; but shall only study to read plainly and aptly (without glossing or adding) the homilies already set forth, or hereafter to be published by lawful authority, for the confirmation of the true faith, and for the good instruction and edification of the people.

*50. Strangers not admitted to preach without showing their  
Licence.*

Neither the minister, churchwardens, nor any other officers of the church, shall suffer any man to preach within their churches or chapels, but such as, by showing their licence to preach, shall appear unto them to be sufficiently authorized thereunto, as is aforesaid.

*51. Strangers not admitted to preach in Cathedral Churches,  
without sufficient authority.*

The deans, presidents, and residentiaries of any cathedral or collegiate church, shall suffer no stranger to preach unto the people in their churches, except they be allowed by the archbishop of the province, or by the bishop of the same diocese, or by either of the universities. And if any in his sermon shall publish any doctrine, either strange, or disagreeing from the Word of God, or from any of the Articles of Religion agreed upon in the Convocation-house, anno 1562, or from the Book of Common Prayer; the dean or the residents shall, by their letters subscribed with some of their hands that heard him, so soon as may be, give notice of the same to the bishop of the diocese, that he may determine the matter, and take such order therein as he shall think convenient.

52. *The names of strange Preachers to be noted in a book.*

That the bishop may understand (if occasion so require) what sermons are made in every church of his diocese, and who presume to preach without licence, the churchwardens and side-men shall see that the names of all preachers, which come to their church from any other place, be noted in a book which they shall have ready for that purpose; wherein every preacher shall subscribe his name, the day when he preached, and the name of the bishop of whom he had licence to preach.

53. *No public opposition between Preachers.*

If any preacher shall, in the pulpit particularly, or namely, of purpose, impugn or confute any doctrine delivered by any other preacher in the same church, or in any church near adjoining, before he hath acquainted the bishop of the diocese therewith, and received order from him what to do in that case, because upon such public dissenting and contradicting there may grow much offence and disquietness unto the people; the churchwardens, or party aggrieved, shall forthwith signify the same to the said bishop, and not suffer the said preacher any more to occupy that place which he hath once abused, except he faithfully promise to forbear all such matter of contention in the church, until the bishop hath taken further order therein; who shall with all convenient speed so proceed therein, that public satisfaction may be made in the congregation where the offence was given. Provided, that if either of the parties offending do appeal, he shall not be suffered to preach *pendente lite*.

54. *The Licences of Preachers refusing Conformity to be void.*

If any man licensed heretofore to preach, by any archbishop, bishop, or by either of the universities, shall at any time from henceforth refuse to conform himself to the laws, ordinances, and rites ecclesiastical, established in the Church of England, he shall be admonished by the bishop of the diocese, or ordinary of the place, to submit himself to the use and due exercise of the same. And if, after such admonition, he do not conform himself within the space of one month, we determine and decree, that the licence of every such preacher shall thereupon be utterly void, and of none effect.

55. *The form of a Prayer to be used by all Preachers before their Sermons. (m)*

Before all sermons, lectures, and homilies, the preachers and ministers shall move the people to join with them in prayer in this form, or to this effect, as briefly as conveniently they may: Ye shall pray for Christ's holy Catholic Church, that is, for the whole congregation of Christian people dispersed throughout the whole world, and especially for the Churches of England, Scotland, and Ireland; and herein I require you most especially to pray for the King's most excellent Majesty, our sovereign Lord James, King of England, Scotland, France, and Ireland, Defender of the Faith, and Supreme Governor in these his realms, and all other his dominions and countries, over all persons in all causes, as well ecclesiastical as temporal; ye shall also pray for our gracious Queen Anne, the noble Prince Henry, and the rest of the king and queen's royal issue; ye shall also pray for the ministers of God's Holy Word and Sacraments, as well archbishops and bishops, as other pastors and curates; ye shall also pray for the king's most honourable council, and for all the nobility and magistrates of this realm; that all and every of these, in their several callings, may serve truly and painfully to the glory of God, and the edifying and well-governing of his people, remembering the account that they must make; also ye shall pray for the whole commons of this realm, that they may live in the true faith and fear of God, in humble obedience to the king, and brotherly charity one to another. Finally, let us praise God for all those which are departed out of this life in the faith of Christ, and pray unto God that we may have grace to direct our lives after their good example; that this life ended, we may be made partakers with them of the glorious resurrection in the life everlasting; always concluding with the Lord's Prayer.

56. *Preachers and Lecturers to read Divine Service, and administer the Sacraments twice a Year at least.*

Every minister, being possessed of a benefice that hath cure and charge of souls, although he chiefly attend to preaching, and hath a curate under him to execute the other duties which are to be performed for him in the church, and likewise every other stipendiary preacher that readeth any lecture, or catechiseth, or preacheth in



any church or chapel, shall twice at the least every year read himself the Divine Service upon two several Sundays publicly, and at the usual times, both in the forenoon and afternoon, in the church which he so possesseth, or where he readeth, catechiseth, or preacheth, as is aforesaid; and shall likewise as often in every year administer the Sacraments of Baptism, if there be any to be baptized, and of the Lord's Supper, in such manner and form, and with the observation of all such rites and ceremonies as are prescribed by the Book of Common Prayer in that behalf; which if he do not accordingly perform, then shall he that is possessed of a benefice (as before) be suspended; and he that is but a reader, preacher, or catechiser, be removed from his place by the bishop of the diocese, until he or they shall submit themselves to perform all the said duties, in such manner and sort as before is prescribed.

*57. The Sacraments not to be refused at the hands of unpreaching Ministers.*

Whereas divers persons, seduced by false teachers, do refuse to have their children baptized by a minister that is no preacher, and to receive the Holy Communion at his hands in the same respect, as though the virtue of those Sacraments did depend upon his ability to preach; forasmuch as the doctrine both of Baptism and of the Lord's Supper is so sufficiently set down in the Book of Common Prayer to be used at the administration of the said Sacraments, as nothing can be added unto it that is material and necessary; we do require and charge every such person, seduced as aforesaid, to reform that their wilfulness, and to submit himself to the order of the Church in that behalf; both the said Sacraments being equally effectual, whether they be ministered by a minister that is no preacher, or by one that is a preacher. And if any hereafter shall offend herein, or leave their own parish churches in that respect, and communicate, or cause their children to be baptized, in other parishes abroad, and will not be moved thereby to reform that their error and unlawful course; let them be presented to the ordinary of the place by the minister, churchwardens, and side-men or quest-men of the parishes where they dwell, and there receive such punishment by ecclesiastical censures, as such obstinacy doth worthily deserve; that is, let them (persisting in their wilfulness) be suspended, and then, after a month's further obstinacy, excommunicated. And likewise, if any parson, vicar, or curate, shall after the publishing hereof, either receive to the Communion any such



persons which are not of his own church and parish, or shall baptize any of their children, thereby strengthening them in their sad errors, let him be suspended, and not released thereof, until he do faithfully promise that he will not afterwards offend therein.

58. *Ministers reading Divine Service, and administering the Sacraments, to wear Surplices, and Graduates therewithal Hoods. (n)*

59. *Ministers to Catechise every Sunday. (o)*

60. *Confirmation to be performed once in three Years.*

Forasmuch as it hath been a solemn, ancient, and laudable custom in the Church of God, continued from the apostles' times, that all bishops should lay their hands upon children baptized, and instructed in the catechism of Christian religion, praying over them, and blessing them, which we commonly call *confirmation*, and that this holy action hath been accustomed in the Church in former ages to be performed in the bishop's visitation every third year; we will and appoint, that every bishop or his suffragan, in his accustomed visitation, do in his own person carefully observe the said custom. And if in that year, by reason of some infirmity, he be not able personally to visit, then he shall not omit the execution of that duty of confirmation the next year after, as he may conveniently.

61. *Ministers to prepare Children for Confirmation.*

Every minister, that hath cure and charge of souls, for the better accomplishing of the orders prescribed in the Book of Common Prayer concerning confirmation, shall take especial care that none shall be presented to the bishop for him to lay his hands upon, but such as can render an account of their faith, according to the catechism in the said book contained. And when the bishop shall assign any time for the performance of that part of his duty, every such minister shall use his best endeavour to prepare and make able, and likewise to procure as many as he can to be then brought, and by the bishop to be confirmed.

62. *Ministers not to marry any Persons without Banns or Licence. (p)*

No minister, upon pain of suspension *per triennium ipso facto*, shall celebrate matrimony between any persons, without a faculty

(n) *Ante*, pp. 86, 237.

(o) *Ante*, p. 93.

(p) *Ante*, p. 151.

or licence granted by some of the persons in these our constitutions expressed, except the Banns of Matrimony have been first published three several Sundays, or holy-days, in the time of Divine Service, in the parish churches and chapels where the said parties dwell, according to the Book of Common Prayer. Neither shall any minister, upon the like pain, under any pretence whatsoever, join any persons so licensed in marriage at any unseasonable times, but only between the hours of eight and twelve in the forenoon, nor in any private place, but either in the said churches or chapels where one of them dwelleth, and likewise in time of Divine Service; nor when banns are thrice asked, and no licence in that respect necessary, before the parents or governors of the parties to be married, being under the age of twenty and one years, shall either personally, or by sufficient testimony, signify to them their consents given to the said marriage.

63. *Ministers of exempt Churches not to marry without Banns, or Licence.*

Every minister, who shall hereafter celebrate marriage between any persons contrary to our said constitutions, or any part of them, under colour of any peculiar liberty or privilege claimed to appertain to certain churches and chapels, shall be suspended *per triennium* by the ordinary of the place where the offence shall be committed. And if any such minister shall afterwards remove from the place where he hath committed that fault, before he be suspended, as is aforesaid, then shall the bishop of the diocese, or ordinary of the place where he remaineth, upon certificate under the hand and seal of the other ordinary, from whose jurisdiction he removed, execute that censure upon him.

64. *Ministers solemnly to bid Holy-days.*

Every parson, vicar, or curate, shall in his several charge declare to the people, every Sunday at the time appointed in the Communion-book, whether there be any holy-days or fasting-days the week following. And if any do hereafter wittingly offend herein, and being once admonished thereof by his ordinary, shall again omit that duty, let him be censured according to law, until he submit himself to the due performance of it.

65. *Ministers solemnly to denounce Recusants and Excommunicates.*

All ordinaries shall, in their several jurisdictions, carefully see

and give order, that as well those who for obstinate refusing to frequent Divine Service established by public authority within this realm of England, as those also (especially of the better sort and condition) who for notorious contumacy, or other notable crimes, stand lawfully excommunicate (unless within three months immediately after the said sentence of excommunication pronounced against them, they reform themselves, and obtain the benefit of absolution), be, every six months ensuing, as well in the parish church, as in the cathedral church of the diocese in which they remain, by the minister openly, in time of Divine Service, upon some Sunday, denounced and declared excommunicate, that others may be thereby both admonished to refrain their company and society, and excited the rather to procure out a writ *De excommunicato capiendo*, thereby to bring and reduce them into due order and obedience. Likewise the registrar of every ecclesiastical court shall yearly between Michaelmas and Christmas duly certify the archbishop of the province of all and singular the premises aforesaid.

66. *Ministers to confer with Recusants.*

Every minister being a preacher, and having any popish recusant or recusants in his parish, and thought fit by the bishop of the diocese, shall labour diligently with them from time to time, thereby to reclaim them from their errors. And if he be no preacher, or not such a preacher, then he shall procure, if he can possibly, some that are preachers so qualified, to take pains with them for that purpose. If he can procure none, then he shall inform the bishop of the diocese thereof, who shall not only appoint some neighbour preacher or preachers adjoining to take that labour upon them, but himself also, as his important affairs will permit him, shall use his best endeavour by instruction, persuasion, and all good means he can devise, to reclaim both them and all other within his diocese so affected.

67. *Ministers to visit the Sick. (q)*

68. *Ministers not to refuse to Christen or Bury. (r)*

No minister shall refuse or delay to christen any child according to the form of the Book of Common Prayer that is brought to the church to him upon Sundays or holy-days, to be christened, or to

(q) *Ante*, pp. 154, 260.

(r) *Ante*, pp. 132, 147, 162, 279.



bury any corpse that is brought to the church or churchyard, convenient warning being given him thereof before, in such manner and form as is prescribed in the said Book of Common Prayer. And if he shall refuse to christen the one, or bury the other (except the party deceased were denounced excommunicated *majori excommunicatione*, for some grievous and notorious crime, and no man able to testify of his repentance), he shall be suspended by the bishop of the diocese from his ministry by the space of three months.

69. *Ministers not to defer Christening, if the Child be in danger.* (s)

70. *Ministers to keep a register of Christenings, Weddings, and Burials.* (t)

71. *Ministers not to preach or administer the Communion in private houses.* (u)

72. *Ministers not to appoint public or private Fasts or Prophecies, or to exercise, but by Authority.*

No minister or ministers shall, without the licence and direction of the bishop of the diocese first obtained and had under his hand and seal, appoint or keep any solemn fasts, either publicly or in any private houses, other than such as by law are, or by public authority shall be, appointed, nor shall be wittingly present at any of them under pain of suspension for the first fault, of excommunication for the second, and of deposition from the ministry for the third. Neither shall any minister, not licensed as is aforesaid, presume to appoint or hold any meetings for sermons, commonly termed by some prophecies or exercises, in market-towns, or other places, under the said pains ; nor, without such licence, to attempt upon any pretence whatsoever, either of possession or obsession, by fasting and prayer, to cast out any devil or devils, under pain of the imputation of imposture or cosenage, and deposition from the ministry.

73. *Ministers not to hold Private Conventicles.*

Forasmuch as all conventicles, and secret meetings of priests and ministers, have been ever justly accounted very hurtful to the state of the church wherein they live ; we do now ordain and constitute, that no priests, or ministers of the Word of God, or any other persons, shall meet together in any private house, or elsewhere, to

(s) *Ante*, p. 141.

(t) *Ante*, p. 238.

(u) *Ante*, p. 159.



consult upon any matter or course to be taken by them, or upon their motion or direction by any other, which may any way tend to the impeaching or depraving of the doctrine of the Church of England, or of the Book of Common Prayer, or of any part of the government and discipline now established in the Church of England, under pain of excommunication *ipso facto*.

74. *Decency in Apparel enjoined to Ministers.*

The true, ancient, and flourishing Churches of Christ, being ever desirous that their prelacy and clergy might be had as well in outward reverence, as otherwise regarded for the worthiness of their ministry, did think it fit, by a prescript form of decent and comely apparel, to have them known to the people, and thereby to receive the honour and estimation due to the special messengers and ministers of Almighty God ; we therefore, following their grave judgment, and the ancient custom of the Church of England, and hoping that a time newfangledness of apparel in some factious persons will die of itself, do constitute and appoint, That the archbishops and bishops shall not intermit to use the accustomed apparel of their degrees. Likewise all deans, masters of colleges, archdeacons, and rectories, in cathedral and collegiate churches, (being priests or deacons,) doctors in divinity, law, and physic, bachelors in divinity, masters of arts, bachelors of law, having any ecclesiastical living, shall usually wear gowns with standing collars and sleeves trait at the hands, or wide sleeves as is used in the universities, with hoods or tippets of silk or sarcenet, and square caps and that all other ministers admitted or to be admitted into that function shall also usually wear the like apparel as is aforesaid, except tippets only. We do further in like manner ordain, that all the said ecclesiastical persons above mentioned shall usually wear in their journeys cloaks, with sleeves, commonly called priests' cloaks, without guards, welts, long buttons, or cuts. And no ecclesiastical person shall wear any coif or wrought night-cap, but only plain night-caps of black silk, satin, or velvet. In all which particulars concerning the apparel here prescribed, our meaning is not to attribute any holiness or special worthiness to the said garments, but for decency, gravity, and order, as is before specified. In private houses, and in their studies, the said persons ecclesiastical may use any comely and scholar-like apparel, provided that it be not cut or pinked ; and that in public they go not in their doublet and hose, without coats or cassocks ; and that they wear not any light-

coloured stockings. Likewise poor beneficed men and curates (not being able to provide themselves long gowns) may go in short gowns of the fashion aforesaid.

*75. Sober Conversation required in Ministers.*

No ecclesiastical person shall at any time, other than for their honest necessities, resort to any taverns or ale-houses, neither shall they board or lodge in any such places. Furthermore, they shall not give themselves to any base or servile labour, or to drinking or riot, spending their time idly by day or by night, playing at dice, cards, or tables, or any other unlawful games; but at all times convenient they shall hear or read somewhat of the Holy Scriptures, or shall occupy themselves with some other honest study or exercise, always doing the things which shall appertain to honesty, and endeavouring to profit the Church of God; having always in mind that they ought to excel all others in purity of life, and should be examples to the people to live well and christianly, under pain of ecclesiastical censures, to be inflicted with severity, according to the qualities of their offences.

*76. Ministers at no time to forsake their calling.*

No man being admitted a deacon or minister shall from thenceforth voluntarily relinquish the same, nor afterwards use himself in the course of his life as a layman, upon pain of excommunication. And the names of all such men, so forsaking their calling, the churchwardens of the parish where they dwell shall present to the bishop of the diocese, or to the ordinary of the place, having episcopal jurisdiction.

SCHOOLMASTERS.

*77. None to teach School without Licence. (x)*

No man shall teach either in public school, or private house, but such as shall be allowed by the bishop of the diocese, or ordinary of the place, under his hand and seal, being found meet as well for his learning and dexterity in teaching, as for sober and honest conversation, and also for right understanding of God's true religion; and also except he shall first subscribe to the first and third articles afore-mentioned simply, and to the two first clauses of the second article.

(x) *Ante*, p. 319.

78. *Curates desirous to teach to be licensed before others.*

In what parish church or chapel soever there is a curate, which is a master of arts, or bachelor of arts, or is otherwise well able to teach youth, and will willingly so do, for the better increase of his living, and training up of children in principles of true religion; we will and ordain, that a licence to teach youth of the parish where he serveth be granted to none by the ordinary of that place, but only to the said curate. Provided always, that this constitution shall not extend to any parish or chapel in country towns, where there is a public school founded already; in which case we think it not meet to allow any to teach grammar, but only him that is allowed for the said public school.

79. *The Duty of Schoolmasters.*

All schoolmasters shall teach in English or Latin, as the children are able to bear, the larger or shorter catechism heretofore by public authority set forth. And as often as any sermon shall be upon holy and festival days within the parish where they teach, they shall bring their scholars to the church where such sermon shall be made, and there see them quietly and soberly behave themselves; and shall examine them at times convenient, after their return, what they have borne away of such sermon. Upon other days, and at other times, they shall train them up with such sentences of Holy scripture, as shall be most expedient to induce them to all godliness; and they shall teach the grammar set forth by King Henry the Eighth, and continued in the times of King Edward the Sixth, and Queen Elizabeth of noble memory, and none other. And if any schoolmaster being licensed, and having subscribed as aforesaid, shall offend in any of the premises, or either speak, write, or teach against anything whereunto he hath formerly subscribed, (if upon admonition by the ordinary he do not amend and reform himself,) let him be suspended from teaching school any longer.

THINGS APPERTAINING TO CHURCHES.

p. *The Great Bible and Book of Common Prayer, to be had in every Church. (y)*

(y) *Ante*, p. 239.

81. *A Font of Stone for Baptism in every Church. (z)*

According to a former constitution, too much neglected in many places, we appoint that there shall be a font of stone in every church and chapel where baptism is to be ministered ; the same to be set in the ancient usual places ; in which only font the minister shall baptize publicly.

82. *A decent Communion-table in every Church. (a)*

Whereas we have no doubt but that in all churches within the realm of England convenient and decent tables are provided and placed for the celebration of the Holy Communion, we appoint, that the same tables shall from time to time be kept and repaired in sufficient and seemly manner, and covered, in time of Divine Service, with a carpet of silk or other decent stuff, thought meet by the ordinary of the place, if any question be made of it, and with a fair linen cloth at the time of the ministration, as becometh that table, and so stand, saving when the said Holy Communion is to be administered ; at which time the same shall be placed in so good sort within the church or chancel, as thereby the minister may be more conveniently heard of the communicants in his prayer and ministration, and the communicants also more conveniently, and in more number, may communicate with the said minister ; and that the ten commandments be set up on the east end of every church and chapel, where the people may best see and read the same, and other chosen sentences written upon the walls of the said churches and chapels, in places convenient ; and likewise that a convenient seat be made for the minister to read service in. All these to be done at the charge of the parish.

83. *A pulpit to be provided in every Church. (b)*84. *A Chest for Alms in every Church. (c)*85. *Churches to be kept in sufficient Reparations. (d)*86. *Churches to be surveyed, and the Decays certified to the High Commissioners.*

Every dean, dean and chapter, archdeacon, and others which

(z) *Ante*, pp. 132, 227.

(a) *Ante*, pp. 227, 244, 250, 259.

(b) *Ante*, pp. 107, 226.

(c) *Ante*, p. 239. (d) *Ante*, p. 269.



have authority to hold ecclesiastical visitations by composition, law, or prescription, shall survey the churches of his or their jurisdiction once in every three years in his own person, or cause the same to be done; and shall from time to time within the said three years certify the high commissioners for causes ecclesiastical, every year, of such defects in any the said churches, as he or they do find to remain unrepaired, and the names and surnames of the parties faulty therein. Upon which certificate, we desire that the said high commissioners will *ex officio mero* send for such parties, and compel them to obey the just and lawful decrees of such ecclesiastical ordinaries making such certificates.

87. *A Terrier of Glebe-lands, and other Possessions belonging to Churches.*

We ordain that the archbishops and all bishops within their several dioceses shall procure (as much as in them lieth) that a true note and terrier of all the glebes, lands, meadows, gardens, orchards, houses, stocks, implements, tenements, and portions of tithes, lying out of their parishes (which belong to any parsonage, or vicarage, or rural prebend) be taken by the view of honest men in every parish, by the appointment of the bishop (whereof the minister to be one), and be laid up in the bishop's registry, there to be for a perpetual memory thereof.

88. *Churches not to be profaned. (e)*

The churchwardens or quest-men and their assistants shall suffer no plays, feasts, banquets, suppers, church-ales-drinkings, temporal courts, or leets, lay-juries, musters, or any other profane usage, to be kept in the church, chapel, or churchyard, neither the bells to be rung superstitiously upon holy-days or eves abrogated by the Book of Common Prayer, nor at any other times, without good cause to be allowed by the minister of the place, and by themselves.

CHURCHWARDENS OR QUEST-MEN, AND SIDE-MEN OR ASSISTANTS.

89. *The choice of Churchwardens and their Account.*

All churchwardens or questmen in every parish shall be chosen by the joint consent of the minister and the parishioners, if it may

(e) *Ante*, pp. 261, 269.

be ; but if they cannot agree upon such a choice, then the minister shall choose one, and the parishioners another ; and without such a joint or several choice none shall take upon them to be churchwardens ; neither shall they continue any longer than one year in that office, except perhaps they be chosen again in like manner. And all churchwardens at the end of their year, or within a month after at the most, shall before the minister and the parishioners give up a just account of such money as they have received, and also what particularly they have bestowed in reparations, and otherwise for the use of the church. And, last of all, going out of their office, they shall truly deliver up to the parishioners whatsoever money or other things of right belonging to the church or parish, which remaineth in their hands, that it may be delivered over by them to the next churchwardens by bill indented.

90. *The Choice of Side-men, and their joint office with Churchwardens. (f)*

PARISH-CLERKS.

91. *Parish-Clerks to be chosen by the Minister.*

No parish-clerk upon any vacation shall be chosen, within the City of London, or elsewhere within the province of Canterbury, but by the parson or vicar ; or where there is no parson or vicar, by the minister of the place for the time being ; which choice shall be signified by the said minister, vicar, or parson, to the parishioners the next Sunday following, in the time of Divine Service. And the said clerk shall be of twenty years of age at the least, and known to the said parson, vicar, or minister, to be of honest conversation, and sufficient for his reading, writing, and also for his competent skill in singing, if it may be. And the said clerks so chosen shall have and receive their ancient wages, without fraud or diminution, either at the hands of the churchwardens, at such times as hath been accustomed, or by their own collection, according to the most ancient custom of every parish.

(f) *Ante*, p. 270.

ECCLESIASTICAL COURTS BELONGING TO THE ARCHBISHOP'S  
JURISDICTION.

92. *None to be cited into divers Courts for Probate of the same Will.*

Forasmuch as many heretofore have been by apparitors, both of inferior courts and of the courts of the archbishop's prerogative, much distracted, and diversely called and summoned for probate of wills, or to take administrations of the goods of persons dying intestate, and are thereby vexed and grieved with many causeless and unnecessary troubles, molestations, and expenses; we constitute and appoint, That all chancellors, commissaries, or officials, or any other exercising ecclesiastical jurisdiction whatsoever, shall at the first charge with an oath all persons called, or voluntarily appearing before them for the probate of any will or the administration of any goods, whether they know, or (moved by any special inducement) do firmly believe, that the party deceased, whose testament or goods depend now in question, had at the time of his or her death any goods, or good debts in any other diocese or dioceses, or peculiar jurisdiction within that province, than in that wherein the said party died, amounting to the value of £5. And if the said person cited, or voluntarily appearing before him, shall upon his oath affirm, that he knoweth, or (as aforesaid) firmly believeth that the said party deceased had goods or good debts in any other diocese or dioceses, or peculiar jurisdiction within the said province, to the value aforesaid, and particularly specify and declare the same; then shall he presently dismiss him, not presuming to intermeddle with the probate of the said will, or to grant administration of the goods of the party so dying intestate; neither shall he require or exact any other charges of the said parties, more than such only as are due for the citation, and other process made and used against the said parties upon their further contumacy; but shall openly and plainly declare and profess, that the said cause belongeth to the prerogative of the archbishop of that province: willing and admonishing the party to prove the said will, or require administration of the said goods in the court of the said prerogative, and to exhibit before him the said judge the probate or administration, under the seal of the prerogative, within forty days next following. And if any chancellor, commissary, official, or other exercising ecclesiastical jurisdiction whatsoever, or any

their registrar, shall offend herein, let him be *ipso facto* suspended from the execution of his office, not to be absolved or released, until he have restored to the party all expenses by him laid out contrary to the tenor of the premises; and every such probate of any testament, or administration of goods so granted, shall be held void and frustrate to all effects of the law whatsoever.

Furthermore we charge and enjoin, That the registrar of every inferior judge do, without all difficulty or delay, certify and inform the apparitor of the prerogative court, repairing unto him once a month, and no oftener, what executors or administrators have been by his said judge, for the incompetency of his own jurisdiction, dismissed to the said prerogative court within the month next before, under pain of a month's suspension from the exercise of his office for every default therein. Provided, that this canon, or any thing therein contained, be not prejudicial to any composition between the archbishop and any bishop or other ordinary, nor to any inferior judge that shall grant any probate of testament or administration of goods, to any party that shall voluntarily desire it, both out of the said inferior court, and also out of the prerogative. Provided likewise, that if any man die *in itinere*, the goods that he hath about him at that present shall not cause his testament or administration to be liable unto the prerogative court.

93. *The Rate of Bona notabilia liable to the Prerogative Court.*

Furthermore, we decree and ordain, That no judge of the archbishop's prerogative shall henceforward cite, or cause to be cited, *ex officio*, any person whatsoever to any of the aforesaid intents, unless he have knowledge that the party deceased was at the time of his death possessed of goods and chattels in some other diocese or dioceses, or peculiar jurisdiction within that province, than in that wherein he died, amounting to the value of £5 at the least; decreeing and declaring that whoso hath not goods in divers dioceses to the said sum or value shall not be accounted to have *bona notabilia*. Always provided, That this clause, here, and in the former constitution mentioned, shall not prejudice those dioceses, where by composition or custom *bona notabilia* are rated at a greater sum. And if any judge of the prerogative court, or any his surrogate, or his registrar or apparitor, shall cite, or cause any person to be cited into his court, contrary to the tenor of the premises, he shall restore to the party so cited all his costs and charges, and the acts and proceedings in that behalf shall be held



void and frustrate. Which expenses, if the said judge, or registrar, or apparitor, shall refuse accordingly to pay, he shall be suspended from the exercise of his office, until he yield to the performance thereof.

94. *None to be cited into the Arches or Audience, but Dwellers within the Archbishop's Diocese, or Peculiars.*

No dean of the arches, nor official of the archbishop's consistory, nor any judge of the audience, shall henceforward, in his own name, or in the name of the archbishop, either *ex officio*, or at the instance of any party, originally cite, summon, or any way compel, or procure to be cited, summoned, or compelled, any person which dwelleth not within the particular diocese or peculiar of the said archbishop to appear before him or any of them, for any cause or matter whatsoever belonging to ecclesiastical cognizance, without the licence of the diocesan first had and obtained in that behalf, other than in such particular cases only as are expressly excepted and reserved in and by a statute *Anno 23 Hen. VIII. cap. 9.* And if any of the said judges shall offend herein, he shall for every such offence be suspended from the exercise of his office for the space of three whole months.

95. *The restraint of double Quarrels. (g)*

Albeit by former constitutions of the Church of England every bishop hath had two months' space to inquire and inform himself of the sufficiency and qualities of every minister, after he hath been presented unto him to be instituted into any benefice: yet, for the avoiding of some inconveniences, we do now abridge and reduce the said two months unto eight and twenty days only. In request of which abridgment we do ordain and appoint that no double quarrel shall hereafter be granted out of any of the archbishop's courts at the suit of any minister whomsoever, except he shall first take his personal oath that the said eight and twenty days at the least are expired, after he first tendered his presentation to the bishop, and that he refused to grant him institution thereupon; or shall enter bonds with sufficient sureties to prove the same to be true; under pain of suspension of the granter thereof from the execution of his office for half a year *toties quoties*, to be denounced by the said archbishop, and nullity of the double quarrel aforesaid,

so unduly procured, to all intents and purposes whatsoever. Always provided, that within the said eight and twenty days the bishop shall not institute any other to the prejudice of the said party before presented, *sub pœnâ nullitatis*.

96. *Inhibitions not to be granted without the subscription of an Advocate.*

That the jurisdiction of bishops may be preserved (as near as may be) entire and free from prejudice, and that for the behoof of the subjects of this land better provision be made, that henceforward they be not grieved with frivolous and wrongful suits and molestations: it is ordained and provided, That no inhibition shall be granted out of any court belonging to the Archbishop of Canterbury, at the instance of any party, unless it be subscribed by an advocate practising in the said court: which the said advocate shall do freely, not taking any fee for the same, except the party prosecuting the suit do voluntarily bestow some gratuity upon him for his counsel and advice in the said cause. The like course shall be used in granting forth any inhibition, at the instance of any party, by the bishop, or his chancellor, against the archdeacon or any other person exercising ecclesiastical jurisdiction: and if in the court or consistory of any bishop there be no advocate at all, then shall the subscription of a proctor practising in the same court be held sufficient.

97. *Inhibitions not to be granted until the Appeal be exhibited to the Judge.*

It is further ordered and decreed that henceforward no inhibition be granted by occasion of any interlocutory decree, or in any cause of correction whatsoever, except under the form aforesaid: and moreover, that before the going out of any such inhibition the appeal itself, or a copy thereof (avouched by oath to be just and true) be exhibited to the judge, or his lawful surrogate, whereby he may be fully informed both of the quality of the crime, and of the cause of the grievance, before the granting forth of the said inhibition. And every appellant, or his lawful proctor, shall, before the obtaining of any such inhibition, show and exhibit to the judge, or his surrogate, in writing, a true copy of those acts wherewith he complaineth himself to be aggrieved, and from which he appealeth: or shall take a corporal oath, that he hath performed his diligence

and true endeavour for the obtaining of the same and could not obtain it at the hands of the registrar in the country, or his deputy, tendering him his fee. And if any judge or registrar shall either procure or permit any inhibition to be sealed, so as is said, contrary to the form and limitation above specified, let him be suspended from the execution of his office for the space of three months: if any proctor, or other person whatsoever by his appointment, shall offend in any of the premises either by making or sending out any inhibition, contrary to the tenor of the said premises, let him be removed from the exercise of his office for the space of a whole year, without hope of release or restoring.

98. *Inhibitions not to be granted to factious Appellants, unless they first subscribe.*

Forasmuch as they who break the laws cannot in reason claim any benefit or protection by the same: we decree and appoint, that after any judge ecclesiastical hath proceeded judicially against obstinate and factious persons, and contemnors of ceremonies for not observing the rites and orders of the Church of England, or for contempt of public prayer, no judge, *ad quem*, shall admit or allow any his or their appeals, unless, he having seen the original appeal, the party appellant do first personally promise and avow, that he will faithfully keep and observe all the rites and ceremonies of the Church of England, as also the prescript form of a Common Prayer; and do likewise subscribe to the three articles formerly by us specified and declared.

99. *None to marry within the Degrees prohibited.*

No person shall marry within the degrees prohibited by the laws of God, and expressed in a table set forth by authority in the year of our Lord God 1563. And all marriages so made and contracted shall be judged incestuous and unlawful, and consequently shall be dissolved as void from the beginning, and the parties so married shall by course of law be separated. And the aforesaid table shall be in every church publicly set up and fixed at the charge of the parish.

100. *None to marry under Twenty-one Years, without their Parents' consent.*

No children under the age of one and twenty years complete



shall contract themselves, or marry without the consent of their parents, or of their guardians and governors, if their parents be deceased.

101. *By whom Licences to marry without Banns shall be granted, and to what sort of Persons.*

No faculty or licence shall be henceforth granted for solemnization of matrimony betwixt any parties, without thrice open publication of the banns, according to the Book of Common Prayer, by any person exercising any ecclesiastical jurisdiction, or claiming any privileges in the right of their churches; but the same shall be granted only by such as have episcopal authority, or the commissary for faculties, vicars general of the archbishops and bishops, *sede plena*; or *sede vacante*, the guardian of the spiritualities, or ordinaries exercising of right episcopal jurisdiction in their several jurisdictions respectively, and unto such persons only as be of good state and quality, and that upon good caution and security taken.

102. *Security to be taken at the granting of such Licences, and under what conditions.*

The security mentioned shall contain these conditions: First, That, at the time of the granting every such licence, there is not any impediment or precontract, consanguinity, affinity, or other lawful cause to hinder the said marriage. Secondly, that there is not any controversy or suit depending in any court before any ecclesiastical judge, touching any contract or marriage of either of the said parties with any other. Thirdly, that they have obtained thereunto the express consent of their parents (if they be living), or otherwise of their guardians or governors. Lastly, that they shall celebrate the said matrimony publicly in the parish-church or chapel where one of them dwelleth, and in no other place, and that between the hours of eight and twelve in the forenoon.

103. *Oaths to be taken for the Conditions.*

For the avoiding of all fraud and collusion in the obtaining of such licences and dispensations, we further constitute and appoint, that before any licence for the celebration of matrimony without publication or banns be had or granted, it shall appear to the judge, by the oaths of two sufficient witnesses, one of them to be known either to the judge himself, or to some other person of good



reputation then present and known likewise to the said judge, that the express consent of the parents, or parent, if one be dead, or guardians or guardian of the parties, is thereunto had and obtained. And furthermore, That one of the parties personally swear, that he believeth there is no let or impediment of precontract, kindred, or alliance, or of any other lawful cause whatsoever, or any suit commenced in any Ecclesiastical Court, to bar or hinder the proceeding of the said matrimony, according to the tenure of the foresaid licence.

104. *An exception for those that are in Widowhood.*

If both the parties which are to marry being in widowhood do seek a faculty for the forbearing of banns, then the clauses before mentioned, requiring the parents' consent, may be omitted: but the parishes where they dwell, both shall be expressed in the licence, as also the parish named where the marriage shall be celebrated. And if any commissary for faculties, vicars general, or other the said ordinaries, shall offend in the premises, or any part thereof, he shall, for every time so offending, be suspended from the execution of his office for the space of six months; and every such licence or dispensation shall be held void to all effects and purposes, as if there had never been any such granted; and the parties marrying by virtue thereof shall be subject to the punishments which are appointed for clandestine marriages.

105. *No Sentence for Divorce to be given upon the sole Confession of the Parties.*

Forasmuch as matrimonial causes have been always reckoned and reputed among the weightiest, and therefore require the greater caution when they come to be handled and debated in judgment, especially in causes wherein matrimony, having been in the church duly solemnized, is required, upon any suggestion or pretext whatsoever, to be dissolved or annulled: we do straitly charge and enjoin, that in all proceedings to divorce, and nullities of matrimony, good circumspection and advice be used, and that the truth may (as far as is possible) be sifted out by the deposition of witnesses, and other lawful proofs and evictions; and that credit be not given to the sole confession of the parties themselves, howsoever taken upon oath, either within or without the court.

106. *No Sentence for Divorce to be given but in open Court.*

No sentence shall be given either for separation *a thoro et mensa*, or for annulling of pretended matrimony, but in open court, and in the seat of justice; and that with the knowledge and consent either of the archbishop within his province, or of the bishop within his diocese, or of the Dean of the Arches, the Judge of the Audience of Canterbury, or of the vicars general, or other principal officials, or, *sede vacante*, of the guardians of the spiritualities, or other ordinaries to whom of right it appertaineth, in their several jurisdictions and courts, and concerning them only that are then dwelling under their jurisdictions.

107. *In all sentences for Divorce, Bond to be taken for not marrying during each other's Life.*

In all sentences pronounced only for divorce and separation *a thoro et mensa*, there shall be a caution and restraint inserted in the act of the said sentence, that the parties so separated shall live chastely and continently; neither shall they, during each other's life, contract matrimony with any other person. And, for the better observation of this last clause, the said sentence of divorce shall not be pronounced until the party or parties requiring the same have given good and sufficient caution and security into the court, that they will not any way break or transgress the said restraint or prohibition.

108. *The Penalty for Judges offending in the premises.*

And if any judge, giving sentence of divorce or separation, shall not fully keep and observe the premises, he shall be, by the archbishop of the province, or by the bishop of the diocese, suspended from the exercise of his office for the space of a whole year; and the sentence of separation, so given contrary to the form aforesaid, shall be held void to all intents and purposes of the law, as if it had not at all been given or pronounced.

ECCLESIASTICAL COURTS BELONGING TO THE JURISDICTION OF BISHOPS  
AND ARCHDEACONS, AND THE PROCEEDINGS IN THEM.

109. *Notorious Crimes and Scandals to be certified into Ecclesiastical Courts by Presentment.*

If any offend their brethren, either by adultery, whoredom, incest,

or drunkenness, or by swearing, ribaldry, usury, and any other uncleanness and wickedness of life, the churchwardens, or quest-men, and side-men, in their next presentments to their ordinaries, shall faithfully present all and every of the said offenders, to the intent that they, and every of them, may be punished by the severity of the laws, according to their deserts; and such notorious offenders shall not be admitted to the Holy Communion till they be reformed.

*110. Schismatics to be presented.*

If the churchwardens, or quest-men, or assistants, do or shall know any man within their parish, or elsewhere, that is a hinderer of the Word of God to be read or sincerely preached, or of the execution of these our constitutions, or a fautor of any usurped or foreign power, by the laws of this realm justly rejected and taken away, or a defender of popish and erroneous doctrine, they shall detect and present the same to the bishop of the diocese, or ordinary of the place, to be censured and punished according to such ecclesiastical laws as are prescribed in that behalf.

*111. Disturbers of Divine Service to be presented. (b)*

*112. Non-Communicants at Easter to be presented.*

The minister, churchwardens, quest-men, and assistants of every parish church and chapel, shall yearly, within forty days after Easter, exhibit to the bishop or his chancellor the names and surnames of all the parishioners, as well men as women, which being of the age of sixteen years received not the Communion at Easter before.

*113. Ministers may present.*

Because it often cometh to pass, that the churchwardens, side-men, quest-men, and such other persons of the laity, as are to take care for the suppressing of sin and wickedness in their several parishes, as much as in them lieth, by admonition, reprehension, and denunciation to their ordinaries, do forbear to discharge their duties therein, either through fear of their superiors, or through negligence, more than were fit, the licentiousness of these times considered; we ordain, that hereafter every parson and vicar, or, in the lawful absence of any parson or vicar, then their curates and



substitutes, may join in every presentment with the said churchwardens, side-men, and the rest above imentioned, at the times hereafter limited, if they, the said churchwardens and the rest, will present such enormities as are apparent in the parish; or if they will not, then every such parson and vicar, or in their absence, as aforesaid, their curates, may themselves present to their ordinaries at such times, and when else they think it meet, all such crimes as they have in charge or otherwise, as by them (being the persons that should have the chief care for the suppressing of sin and impiety in their parishes) shall be thought to require due reformation. Provided always, that if any man confess his secret and hidden sins to the minister, for the unburdening of his conscience, and to receive spiritual consolation and ease of mind from him; we do not any way bind the said minister by this our constitution, but do straitly charge and admonish him, that he do not at any time reveal and make known to any person whatsoever any crime or offence so committed to his trust and secrecy, (except they be such crimes as by the laws of this realm his own life may be called into question for concealing the same,) under pain of irregularity.

#### 114. *Ministers shall present Recusants.*

Every parson, vicar, or curate, shall carefully inform themselves, every year hereafter, how many Popish recusants, men, women, and children, above the age of thirteen years, and how many being popishly given (who, though they come to the church, yet do refuse to receive the communion,) are inhabitants or make their abode, either as sojourners, or common guests, in any of their several parishes; and shall set down their true names in writing, (if they can learn them,) or otherwise such names as for the time they carry, distinguishing the absolute recusants from half recusants; and the same, so far as they know or believe, so distinguished and set down under their hands, shall truly present to their ordinaries before the feast of the Nativity, next ensuing, under pain of suspension to be inflicted upon them by the said ordinaries; and so every year hereafter, upon the like pain, before the feast of St. John Baptist. Also we ordain, that all such ordinaries, chancellors, commissaries, archdeacons, officials, and all other ecclesiastical officers, to whom the said presentments shall be exhibited, shall likewise, within one month after the receipt of the same, under pain of suspension by the bishop from the execution of their offices for the space of half a year, as often as they shall offend therein, deliver them, or cause



tem to be delivered, to the bishop respectively; who shall also exhibit them to the archbishop within six weeks, and the archbishop to his majesty within other six weeks, after he hath received the said presentments.

*115. Ministers and Churchwardens not to be sued for presenting.*

Whereas for the reformation of criminous persons and disorders in every parish, the churchwardens, quest-men, and side-men, such other church officers, are sworn, and the minister charged to present as well the crimes and disorders committed by the said criminous persons, as also the common fame which is spread abroad of them, whereby they are often maligned, and sometimes troubled by the said delinquents, or their friends: we do admonish and exhort all judges, both ecclesiastical and temporal, as they regard and reverence the fearful judgment-seat of the highest Judge, that they limit not in any of their courts any complaint, plea, suit, or suits, against any such churchwardens, quest-men, side-men, or other church officers, for making any such presentments, nor against any minister for any presentment that he shall make; all the said presentments tending to the restraint of shameless impiety; and considering that the rules both of charity and government do presume that they did nothing therein of malice, but for the discharge of their consciences.

*16. Churchwardens not bound to present oftener than twice a year.*

No churchwardens, quest-men, or side-men of any parish shall be enforced to exhibit their presentments to any having ecclesiastical jurisdiction, above once in every year, where it hath been so oftener used, nor above twice in any diocese whatsoever, except be at the bishop's visitation. For the which presentments of every parish church or chapel the registrar of any court, where they are to be exhibited, shall not receive in one year above fourpence, under pain, for every offence therein, of suspension from the execution of his office for the space of a month, *toties quoties*. Provided always, that, as good occasion shall require, it shall be lawful for every minister, churchwardens, and side-men to present offenders as often as they shall think meet; and likewise for any boldly-disposed person, or for any ecclesiastical judge, upon knowledge, or notice given unto him or them of any enormous crime within his jurisdiction, to move the minister, churchwardens, or side-men, as they tender the glory of God and reformation of sin,

to present the same, if they shall find sufficient cause to induce them thereunto, that it may be in due time punished and reformed. Provided, that for these voluntary presentments there be no fee required or taken of them, under the pain aforesaid.

117. *Churchwardens not to be troubled for not presenting oftener than twice a year.*

No churchwardens, quest-men, or side-men, shall be called or cited, but only at the said time or times before limited, to appear before any ecclesiastical judge whatsoever, for refusing at other times to present any faults committed in their parishes and punishable by ecclesiastical laws. Neither shall they, nor any of them, after their presentments exhibited at any of those times, be any further troubled for the same, except upon manifest and evident proof it may appear, that they did then willingly and wittingly omit to present some such public crime or crimes as they knew to be committed, or could not be ignorant that there was then a public fame of them; or unless there be very just cause to call them for the explanation of their former presentments. In which case of wilful omission, their ordinaries shall proceed against them in such sort as in causes of wilful perjury in a court ecclesiastical it is already by law provided.

118. *The old Churchwardens to make their Presentments before the new be sworn.*

The office of all churchwardens and side-men shall be reputed ever hereafter to continue until the new churchwardens that shall succeed them be sworn, which shall be the first week after Easter, or some week following, according to the direction of the ordinary. Which time so appointed shall always be one of the two times in every year, when the minister, and churchwardens, and side-men of every parish shall exhibit to their several ordinaries the presentments of such enormities as have happened in their parishes since their last presentments. And this duty they shall perform before the newly-chosen churchwardens and side-men be sworn, and shall not be suffered to pass over the said presentments to those that are newly come into office, and are by intendment ignorant of such crimes; under pain of those censures which are appointed for the reformation of such dalliers and dispensers with their own consciences and oaths.

119. *Convenient time to be assigned for framing Presentments.*

For the avoiding of such inconveniences as heretofore have happened by the hasty making of bills of presentments, upon the days of the visitation and synods, it is ordered, that always hereafter every chancellor, archdeacon, commissary, and official, and every other person having ecclesiastical jurisdiction, at the ordinary time when the churchwardens are sworn; and the archbishops and bishops, when he or they do summon their visitation, shall deliver, or cause to be delivered to the churchwardens, quest-men, and side-men of every parish, or to some of them, such books of articles as they, or any of them, shall require, for the year following, the said churchwardens, quest-men, and side-men to ground their presentments upon, at such times as they are to exhibit them. In which book shall be contained the form of the oath, which must be taken immediately before every such presentment; to the intent that, having beforehand time sufficient, not only to peruse and consider what their said oath shall be, but the articles also whereupon they are to ground their presentments, they may frame them at home with advisedly and truly, to the discharge of their own consciences, after they are sworn, as becometh honest and godly men.

20. *None to be cited into Ecclesiastical Courts by Process of Quorum Nomina.*

No bishop, chancellor, archdeacon, official, or other ecclesiastical judge, shall suffer any general processes of *Quorum Nomina* to be sent out of his court: except the names of all such as thereby are to be cited shall be first expressly entered by the hand of the registrar, or his deputy, under the said processes, and the said processes and names be first subscribed by the judge, or his deputy, and his seal thereto affixed.

121. *None to be cited into several Courts for one Crime.*

In places where the bishop and archdeacon do by prescription or composition visit at several times in one and the same year, lest by one and the self-same fault any of his majesty's subjects should be challenged and molested in divers ecclesiastical courts, we order and appoint, that every archdeacon or his official, within one month after the visitation ended that year and the presentments received, shall certify under his hand and seal to the bishop, or his chancellor, the names and crimes of all such as are detected and presented in his said visitation, to the end the chancellor shall thenceforth forbear



to convent any person for any crime or cause so detected or presented to the archdeacon. And the chancellor within the like time after the bishop's visitation ended, and presentments received, shall under his hand and seal signify to the archdeacon, or his official, the names and crimes of all such persons which shall be detected or presented unto him in that visitation to the same intent as is aforesaid. And if these officers shall not certify each other, as is here prescribed, or after such certificate shall intermeddle with the crimes or persons detected and presented in each other's visitation; then every of them so offending shall be suspended from all exercise of his jurisdiction by the bishop of the diocese, until he shall repay the costs and expenses which the parties grieved have been at by that vexation.

122. *No Sentence of Deprivation or Deposition to be pronounced against a Minister but by the Bishop. (i)*

123. *No act to be sped but in open Court.*

No chancellor, commissary, archdeacon, official, or any other person using ecclesiastical jurisdiction whosoever, shall speed any judicial act, either of contentious or voluntary jurisdiction, except he have the ordinary registrar of that court, or his lawful deputy; or if he or they will not or cannot be present, then such persons as by law are allowed in that behalf to write or speed the same under pain of suspension *ipso facto*.

124. *No court to have more than one Seal.*

No chancellor, commissary, archdeacon, official, or any other exercising ecclesiastical jurisdiction, shall without the bishop's consent have any more seals than one, for the sealing of all matters incident to his office: which seal shall always be kept either by himself, or by his lawful substitute exercising jurisdiction for him, and remaining within the jurisdiction of the said judge, or in the city or principal town of the county. This seal shall contain the title of that jurisdiction, which every of the said judges or their deputies do execute.

125. *Convenient Places to be chosen for the keeping of Courts.*

All chancellors, commissaries, archdeacons, officials, and all other exercising ecclesiastical jurisdiction, shall appoint such meet places

(i) *Ante*, p. 292.



for the keeping of their courts, by the assignment or approbation of the bishop of the diocese, as shall be convenient for entertainment of those that are to make their appearance there, and most indifferent for their travel. And likewise they shall keep and end their courts in such convenient time, as every may return home-wards in as due season as may be.

126. *Peculiar and inferior Courts to exhibit the original Copies of Wills into the Bishop's Registry.*

Whereas deans, archdeacons, prebendaries, parsons, vicars, and others, exercising ecclesiastical jurisdiction, claim liberty to prove the last wills and testaments of persons deceased within their several jurisdictions, having no known or certain registrars, nor public place to keep their records in: by reason whereof many wills, rights, and legacies, upon the death or change of such persons, and their private notaries, miscarry and cannot be found, to the great prejudice of his majesty's subjects; we therefore order and enjoin, that all such possessors and exercisers of peculiar jurisdiction shall once in every year exhibit into the public registry of the bishop of the diocese, or of the dean and chapter, under whose jurisdiction the said peculiars are, every original testament of every person in that time deceased, and by them proved in their several peculiar jurisdictions, or a true copy of every such testament, examined, subscribed, and sealed by the peculiar judge and his notary. Otherwise, if any of them fail so to do, the bishop of the diocese, or dean and chapter, unto whom the said jurisdictions do respectively belong shall suspend the said parties, and every of them, from the exercise of all such peculiar jurisdiction, until they have performed this our constitution.

JUDGES ECCLESIASTICAL AND THEIR SURROGATES.

127. *The Quality and Oath of Judges.*

No man shall hereafter be admitted a chancellor, commissary, or official, to exercise any ecclesiastical jurisdiction, except he be of the full age of six-and-twenty years at the least, and one that is learned in the civil and ecclesiastical laws, and is at the least a master of arts, or bachelor of law, and is reasonably well practised in the course thereof, as likewise well affected, and zealously bent to religion, touching whose life and manners no evil example is had, and except, before he enter into or execute any such office, he shall

take the oath of the king's supremacy in the presence of the bishop, or in the open court, and shall subscribe to the articles of religion agreed upon in the convocation, in the year one thousand five hundred sixty and two, and shall also swear that he will, to the uttermost of his understanding, deal uprightly and justly in his office, without respect or favour or reward; the said oaths and subscription to be recorded by a registrar then present. And likewise all chancellors, commissaries, officials, registrars, and all others that do now possess or execute any places of ecclesiastical jurisdiction, or service, shall before Christmas next, in the presence of the archbishop or bishop, or in open court, under whom or where they exercise their offices, take the same oaths, and subscribe, as before is said; or, upon refusal so to do, shall be suspended from the execution of their offices, until they shall take the said oaths, and subscribe as aforesaid.

128. *The quality of Surrogates.*

No chancellor, commissary, archdeacon, official, or any other person using ecclesiastical jurisdiction, shall at any time substitute in their absence any to keep any court for them, except he be either a grave minister and a graduate, or a licensed public preacher, and a beneficed man near the place where the courts are kept, or a bachelor of law, or a master of arts at least, who hath some skill in the civil and ecclesiastical law, and is a favourer of true religion, and a man of modest and honest conversation; under pain of suspension, for every time that they offend therein, from the execution of their offices, for the space of three months, *toties quoties*; and he likewise, that is deputed, being not qualified as is before expressed, and yet shall presume to be a substitute to any judge, and shall keep any court, as is aforesaid, shall undergo the same censure in manner and form as is before expressed.

PROCTORS.

129. *Proctors not to retain Causes without the lawful Assignment of the Parties.*

None shall procure in any cause whatsoever, unless he be thereunto constituted and appointed by the party himself, either before the judge, and by act in court, or unless, in the beginning of the suit, he be, by a true and sufficient proxy thereunto warranted and enabled. We call that proxy sufficient, which is strengthened and

confirmed by some authentical seal, the party's approbation, or at least his ratification therewithal concurring. All which proxies shall be forthwith by the said proctors exhibited into the court, and be safely kept and preserved by the registrar in the public registry of the said court. And if any registrar or proctor shall offend herein, he shall be secluded from the exercise of his office for the space of two months, without hope of release or restoring.

130. *Proctors not to retain Causes without the Counsel of an Advocate.*

For lessening and abridging the multitude of suits and contentions, as also for preventing the complaints of suitors in courts ecclesiastical, who many times are overthrown by the oversight and negligence, or by the ignorance and insufficiency of proctors; and likewise for the furtherance and increase of learning, and the advancement of civil and canon law, following the laudable custom heretofore observed in the courts pertaining to the Archbishop of Canterbury; we will and ordain that no proctor exercising in any of them shall entertain any cause whatsoever, and keep and retain the same for two court days, without the counsel and advice of an advocate, under pain of a year's suspension from his practice; neither shall the judge have power to release or mitigate the said penalty, without express mandate and authority from the archbishop aforesaid.

131. *Proctors not to conclude in any Case without the knowledge of an Advocate.*

No judge in any of the said courts of the archbishop shall admit any libel, or any other matter, without the advice of an advocate, admitted to practise in the same court or without his subscription; neither shall any proctor conclude any cause depending without the knowledge of the advocate retained and feed in the cause; which, if any proctor shall do, or procure to be done, or shall by any colour whatsoever defraud the advocate of his duty or fee, or shall be negligent in repairing to the advocate, and requiring his advice what course is to be taken in the cause, he shall be suspended from all practice for the space of six months, without hope of being hereunto restored before the said term be fully complete.

132. *Proctors prohibited the Oath, In animam domini sui.*

Forasmuch as in the probate of testaments and suits for adminis-



tration of the goods of persons dying intestate, the oath usually taken by proctors of courts, *in animam constituentis*, is found to be inconvenient; we do therefore decree and ordain, that every executor, or suitor for administration, shall personally repair to the judge in that behalf, or his surrogate, and in his own person (and not by proctor) take the oath accustomed in these cases. But if by reason of sickness, or age, or any other just let or impediment, he be not able to make his personal appearance before the judge, it shall be lawful for the judge (there being faith first made by a credible person of the truth of his said hindrance or impediment) to grant a commission to some grave ecclesiastical person, abiding near the party aforesaid, whereby he shall give power and authority to the said ecclesiastical person, in his stead, to minister the accustomed oath above mentioned to the executor, or suitor for such administration, requiring his said substitute, that by a faithful and trusty messenger he certify the said judge truly and faithfully what he hath done therein. Lastly, we ordain and appoint, that no judge or registrar shall in any wise receive for the writing, drawing, or sealing of any such commission, above the sum of six shillings and eightpence; whereof one moiety to be for the judge, and the other for the registrar of the said court.

133. *Proctors not to be clamorous in Court.*

Forasmuch as it is found by experience, that the loud and confused cries and clamours of proctors in the courts of the archbishop are not only troublesome and offensive to the judges and advocates, but also give occasion to the standers-by, of contempt and calumny toward the court itself; that more respect may be had to the dignity of the judge than heretofore, and that causes may more easily and commodiously be handled and dispatched, we charge and enjoin, that all proctors in the said courts do especially intend, that the acts be faithfully entered and set down by the registrar, according to the advice and direction of the advocate; that the said proctors refrain loud speech and babbling, and behave themselves quietly and modestly; and that when either the judges or advocates, or any of them, shall happen to speak, they presently be silent, upon pain of silencing for two whole terms then immediately following every such offence of theirs. And if any of them shall the second time offend herein, and after due monition shall not reform himself, let him be for ever removed from his practice.



REGISTRARS.

134. *Abuses to be reformed in Registrars.*

If any registrar, or his deputy or substitute whatsoever, shall receive any certificate without the knowledge and consent of the judge of the court, or willingly omit to cause any person cited to appear upon any court-day, to be called; or unduly put off and defer the examination of witnesses to be examined by a day set and assigned by the judge; or do not obey and observe the judicial and lawful monition of the said judge; or omit to write, or cause to be written, such citations and decrees as are to be put in execution, and set forth before the next court-day; or shall not cause all testaments exhibited into his office to be registered within a convenient time, or shall set down or enact, as decreed by the judge, any thing false, or conceited by himself, and not so ordered or decreed by the judge; or, in the transmission of processes to the judge *ad quem*, shall add or insert any falsehood or untruth, or omit anything therein, either by cunning or by gross negligence; or in any causes of instance, or promoted of office, shall receive any reward in favour of either party; or be of counsel directly or indirectly with either the parties in suit; or in the execution of their office shall do aught else maliciously, or fraudulently, whereby the said ecclesiastical judge, or his proceedings, may be slandered or defamed; we will and ordain, that the said registrar, or his deputy or substitute, offending in all or any of the premises, shall by the bishop of the diocese be suspended from the exercise of his office for the space of one, two, or three months, or more, according to the quality of his offence; and that the said bishop shall assign some other public notary to execute and discharge all things appertaining to his office, during the time of his said suspension.

135. *A certain rate of fees due to all Ecclesiastical Officers.*

No bishop, suffragan, chancellor, commissary, archdeacon, official, nor any other exercising ecclesiastical jurisdiction whatsoever, nor any registrar of any ecclesiastical courts, nor any minister belonging to any of the said offices or courts, shall hereafter, for any cause incident to their several offices, take or receive any other or greater fees than such as were certified to the most reverend father in God, John, late Archbishop of Canterbury, in the year of our Lord God one thousand five hundred ninety and seven, and were by him

ratified and approved; under pain that every such judge, officer, or minister offending herein, shall be suspended from the exercise of their several offices for the space of six months, for every such offence. Always provided, that if any question shall arise concerning the certainty of the said fees, or any of them, then those fees shall be held for lawful, which the Archbishop of Canterbury for the time being shall under his hand approve, except the statutes of this realm before made do in any particular case express some other fees to be due. Provided furthermore, that no fee or money shall be received either by the archbishop, or any bishop, or suffragan, either directly or indirectly, for admitting of any into sacred orders; nor that any other person or persons under the said archbishop, bishop, or suffragan, shall for parchment, writing, wax, sealing, or any other respect, thereunto appertaining, take above ten shillings, under such pains as are already by law prescribed.

136. *A table of the rates and fees to be set up in courts and registries.*

We do likewise constitute and appoint, that the registrars belonging to every such ecclesiastical judge shall place two tables, containing the several rates and sums of all the said fees; one in the usual place or consistory where the court is kept, and the other in his registry; and both of them in such sort as every man, whom it concerneth, may without difficulty come to the view and perusal thereof, and take a copy of them; the same tables to be set up before the feast of the Nativity next ensuing. And if any registrar shall fail to place the said tables according to the tenor hereof, he shall be suspended from the execution of his office, until he cause the same to be accordingly done; and the said tables being once set up, if he shall at any time remove, or suffer the same to be removed, hidden, or any way hindered from sight, contrary to the true meaning of this constitution, he shall for every such offence be suspended from the exercise of his office for the space of six months.

137. *The whole fees for showing letters of orders and other licences, due but once in every bishop's time.*

Forasmuch as the chief and principal cause and use of visitation is, that the bishop, archdeacon, or other assigned to visit, may get some good knowledge of the state, sufficiency, and ability of the clergy, and other persons whom they are to visit; we think it con-

venient that every parson, vicar, curate, schoolmaster, or other person licensed whosoever, do at the bishop's first visitation, or at the next visitation after his admission, show and exhibit unto him his letters of orders, institution, and induction, and all other his dispensations, licences, or faculties whatsoever, to be by the said bishop either allowed, or (if there be just cause) disallowed and rejected, and being by him approved, to be, as the custom is, signed by the registrar; and that the whole fees accustomed to be paid in the visitations in respect of the premises be paid only once in the whole time of every bishop, and afterwards but half of the said accustomed fees in every other visitation, during the said bishop's continuance.

APPARITORS.

138. *The number of Apparitors restrained.*

Forasmuch as we are desirous to redress such abuses and aggrievances as are said to grow by somnors or apparitors, we think it meet that the multitude of apparitors be (as much as is possible) abridged or restrained: wherefore we decree and ordain, that no bishop or archdeacon, or their vicars, or officials, or other inferior ordinaries, shall depute or have more apparitors to serve in their jurisdictions respectively, than either they or their predecessors were accustomed to have thirty years before the publishing of these our present constitutions. All which apparitors shall by themselves faithfully execute their offices; neither shall they, by any colour or pretence whatsoever, cause or suffer their mandates to be executed by any messengers or substitutes, unless it be upon some good cause to be first known and approved by the ordinary of the place. Moreover they shall not take upon them the office of promoters or informers for the court, neither shall they exact more or greater fees than are in these our constitutions formally prescribed. And if either the number of the apparitors deputed shall exceed the aforesaid limitation, or any of the said apparitors shall offend in any of the premises; the persons deputing them, if they be bishops, shall, upon admonition of their superior, discharge the persons exceeding the number so limited; if inferior ordinaries, they shall be suspended from the execution of their office, until they have dismissed the apparitors by them so deputed; and the parties themselves so deputed shall for ever be removed from the office of apparitors; and if, being so removed, they desist not from the exercise of their said

offices, let them be punished by ecclesiastical censures, as persons contumacious. Provided, that if upon experience the number of the said apparitors be too great in any diocese in the judgment of the Archbishop of Canterbury for the time being, they shall by him be so abridged, as he shall think meet and convenient.

AUTHORITY OF SYNODS.

139. *A national Synod the Church Representative.*

Whosoever shall hereafter affirm, that the sacred synod of this nation, in the name of Christ and by the king's authority assembled, is not the true Church of England by representation, let him be excommunicated, and not restored, until he repent, and publicly revoke that his wicked error.

140. *Synods conclude as well the absent as the present.*

Whosoever shall affirm, that no manner of person either of the clergy or laity, not being themselves particularly assembled in the said sacred synod, are to be subject to the decrees thereof in causes ecclesiastical (made and ratified by the king's majesty's supreme authority), as not having given their voices unto them, let him be excommunicated, and not restored, until he repent and publicly revoke that his wicked error.

141. *Depravers of the Synod censured.*

Whosoever shall hereafter affirm, that the sacred synod, assembled as aforesaid, was a company of such persons as did conspire together against godly and religious professors of the gospel, and that therefore both they and their proceedings in making of canons and constitutions in causes ecclesiastical by the king's authority, as aforesaid, ought to be despised and contemned, the same being ratified, confirmed, and enjoined by the said regal power, supremacy, and authority, let them be excommunicated, and not restored, until they repent and publicly revoke that their wicked error.



## INDEX.



BINGER (Lord), on Ecclesiastical Common Law, 7.

ABSOLUTION, at Morning Prayer, 87.

by whom to be pronounced, 88.

in Communion Service, 124.

ACOLYTE, meaning of term, 46.

admission of, 202.

ACOLYTH, meaning of term, 47.

ACT of Court, 328.

on petition, 331.

ADMONITION. See MONITION.

ADORATION, 182.

ADVERTISEMENTS of Eliz., 506.

AGNUS DEI, 202.

ALB, 206.

ALLEGATION, responsive, 338.

ALMS, chest for, to be provided, 239, 574.

Injunctions of Edw. VI. and Eliz., 482, 487, 493, 497.

AMESS, 206.

ANGLICAN Canon Law, 3, 4.

ANSWERS, requisites of, 337.

responsive allegation, 338.

rules of Court of Arches, 338-350.

APPEAL, rules of Court of Arches, 352.

bishop may send cause to Court of Appeal of province, 370.

none from interlocutory decree, 371.

what may be, 373.

provisions in view of, by Public Worship Regulation Act, 404.

to Privy Council by Public Worship Regulation Act, 405.

evidence on, 407.

history of, before 1833, 417.

2 & 3 Will. IV. c. 92, and 3 & 4 Will. IV. c. 41, constitute Privy

Council Court of Appeal in Ecclesiastical Causes, 421, 422.

APPEAL—(*continued*).

- course of procedure under 3 & 4 Will. IV. c. 41, 424.
- rehearing, 424.
- present court of, 426.

## ARCHBISHOP. See BISHOP.

## ARCHES COURT, rules of as to pleas, 334, 336.

- rules as to answers, 338.
- rules of procedure, 347.
- sending complaint to, by Church Discipline Act, 357.
- dean of, must accept letters of request, 371.
- provisions as to, in Public Worship Regulation Act, 392.
- dean of, 393.
- limited to proctors, 407.

## ARTICLES, The forty-two promulgated in 1552, 56.

- in legal proceedings, 342.
- what they must contain, 342.
- whole charge to be stated at once, 343.
- governed by citation, 343.
- analogy of to criminal prosecutions, 344.
- not so much strictness required as in indictments, 346.
- rules of Court of Arches, 348, 351.
- under Church Discipline Act, 357, 369.
- history of, 514.
- of 1553-1571, 517.

## ASHES, use of, 185.

## BALDACCHINOS, 252.

- many erections of this kind still in existence, 253.
- are unlawful, 254.

## BAPTISM, service in First Prayer Book of Edw. VI., 57.

- in Second Prayer Book of Edw. VI., 59.
- change in office of, in 1661, 66.
- description of, in 25th and 27th articles, 131.
- public, 131.
- every one is entitled to, 132.
- Canon 29 as to sponsors, 132, 552.
- various services of, 132.

service of public baptism of infants compared in Prayer Books of 1549, 1552, and Sealed Books, 132-139.

30th Canon, explaining sign of cross, 139, 552.

private baptism when allowable, 140.

private baptism of infants in three Prayer Books, compared, 141-144.

of such as are of riper years, 144.

what is legal baptism, 145.

performed by layman sufficient (*Kemp v. Wickes*), 145.

BAPTISM—(*continued*).

by a dissenting minister (*Escott v. Mastin*), 146.

by a heretic (*Titchmarsh v. Chapman*), 147.

ministers not to refuse (*Canon 68*), 569.

not to be deferred if child is in danger (*Canon 69*), 570.

BARRISTER-AT-LAW, in Isle of Man, includes advocate, 391.

BELLS, use of sacring, 202, 259, 260.

power of churchwardens as to, 269.

Injunction of *Eliz.*, 501.

BENEDICTUS, 90.

BIBLE, large, to be provided at charge of parish, 239.

Injunction of *Edward VI.* and *Eliz.* as to, 480, 483, 491.

BISHOP, power to inhibit, 30, 372, 386, 408.

power to grant and revoke licences, 30.

to consecrate without consent of incumbent, 31.

Bishop of Winchester *v. Rugg*, 31.

criminal proceedings to be initiated by, 355.

interpretation of term, 359, 389.

may issue commission of inquiry, 361.

discretion of, in instituting proceedings, 364.

power of pronouncing sentence, 367, 369.

may send cause to Court of Appeal of Province, 370.

who to act if bishop is patron of preferment of accused party, or ill, 372, 386, 413.

*ex parte* *Denison*, 372.

members of Privy Council to be on Judicial Committee in appeals under Church Discipline Act, 373.

power as to exempt, or peculiar, places or preferments, 377.

saving of archbishops' and bishops' powers, 381.

what course to be taken by a representation under Public Worship Regulation Act, 384.

as to discretion in proceedings on representation under Public Worship Regulation Act, *quare*, 400.

judgment by consent, 401.

judgment of, does not finally decide questions of law, 402.

proceedings if parties will not submit to decision of, 402.

obedience to order or monition of, how enforced and determined, 408, 411.

to provide during inhibition for service of church and cure of souls, 411.

BOOKS, Act for abolishing certain, 3 & 4 *Edw. VI. c. 10*, 464.

Injunction of *Eliz.* respecting, 502.

BOWING at the name of *Jesus*, 177.

must not amount to a ceremony, 177.

equivalent to kneeling, 181.

when allowable, 183.

- BOWING to the altar, 183.
- BRASSES, 229.
- BREAD, to be unleavened, by First Prayer Book, 129.  
     kind of, in Second Prayer Book, 131.  
     by whom to be provided, 131.  
     wafer, 193.  
     wheaten (20th Canon), 194, 237, 549.  
     Injunction of Eliz. as to, 505.
- BUILDINGS, removal of consecrated, 23.
- BURIAL. See DEAD, BURIAL OF.
- BURIAL-GROUND, interpretation of term, 390, 391.
- BURNET, opinion on 1 Edw. VI. c. 12, 49.
- CALENDAR, changes in Elizabeth's Prayer Book, 63.
- CANDLESTICKS on Communion Table, 249.
- CANON LAW, its meaning, 3.  
     Blackstone's account of, 3, 4, 5.  
     its validity in England, 4.  
     Anglican, 4.
- CANONS, Constitutions and, of the Church of England, 543-559.
- CATECHISM, in First Prayer Book, 57.  
     minister to catechise every Sunday, 93, 567.  
     in Prayer Books of 1549, 1552, and Sealed Books, 149.
- CATHEDRAL, ornaments and vestments of minister of, 211, 212, 414, 550, 551.  
     Holy Communion in, 212, 550.  
     organs may be necessary in, 264.  
     provisions of Public Worship Regulation Act, 413.  
     Injunction of Eliz. as to singing in, 501.  
     strangers preaching in, (Canon 51), 563.
- CEREMONIAL, explication of term, 164.
- CEREMONIES, only those mentioned in Prayer Book may be used, 35, 113, 170.  
     exposition of, in First and Second Prayer Books of Edw. VI. and Sealed Books, 81.  
     difficulty of discriminating between rite and ceremony, 164.  
     legality of, 165.  
     mutable, 166.  
     are those not specifically abolished to be retained, 167.  
     do canons, injunctions, or statutes govern them, 167.  
     forbidden, though not performed during Divine Service, 169.  
     connected with ordinary services, 170.  
     Injunction of Edw. VI. as to superstitions, 486.
- CHALICE, mixed, illegal, 192.
- CHANCEL, repairs of, 225.



- HANCEL, included in church, 391.
- HANCERY COURT, YORK, provisions of Public Worship Regulation Act, 392.
- HAPEL, definition of, 14.  
     parochial, 14.  
     of ease, 15, 307.  
     free, 15, 307.  
     private, 16.  
     district, 16.  
     proprietary, 17.  
     college and school, 17.  
     34 & 35 Vict. c. 66, 18.
- HAPLAIN, 33.  
     for army and navy, 33.  
     for gaols, workhouses, &c., 33.  
     private, 33.  
     21 Hen. VIII. c. 13, as to, 33, 34, 35.
- HARLES II., restoration of, 65.  
     his Commission on the Prayer Book, 65.  
     Act of Uniformity of, 68, 446.
- HASUBLE, 207.
- HORAL SERVICE, 38, 204.  
     Injunctions of Elizabeth, 40.  
     statutes of Edw. VI., 40.  
     comments of Dr. Stephens on *Hutchins v. Denziloe & Loveland*, 42.  
     *Hutchins v. Denziloe & Loveland*, 58.
- HURCH, definition of, 14, 390.  
     Building Acts, 15, 16.  
     repairs of, 225, 269, 395.  
     seats in the, 226.  
     who are members of Church of England, 266.  
     shutting up, 364.  
     includes chancel, 391.  
     alteration or addition to fabric, 394.  
     Act against quarrelling and fighting in (5 & 6 Edw. VI. c. 4), 469.  
     Canons 3, 4, 5, 6, 7, 8, 9, 10 on Church of England, 544.  
     reverence to be used in (Canon 18), 548.  
     things appertaining to (Canons 80-88), 573.
- HURCH DISCIPLINE ACT, 355-381, 387.
- HURCHING OF WOMEN, replaced purification of women, Second Prayer Book of Edw. VI., 59, 163.  
     First and Second Prayer Books of Edw. VI. and Sealed Books compared, 109.  
     variation in concluding rubric, 110.  
     service for, 163.

- CHURCHWARDENS, 265, 272.  
     their powers, 267-270.  
     Canons 89, 90, 115-118, 575-587.
- CHURCHYARDS, consecration and enlargement of, 24.  
     Act against quarrelling and fighting in (5 & 6 Edw. VI. c. 4), 469.
- CITATION, 327.  
     service of, personal, *viis et modis*, 328.  
     certificate of service, 328.  
     proceedings *in contumaciam*, 328.
- CLERK in holy orders can relinquish them, 361.  
     parish (Canon 91), 576.
- COATS OF ARMS, 230.
- COFFINS, 162.
- COLLECT, meaning of term, 45.  
     at Morning Prayer, 90.
- COLLEGIATE CHURCH. See CATHEDRAL.
- COMMINATION Service in First and Second Prayer Books of Edw. VI.  
     and Sealed Books, 110, 163.
- COMMISSION, under Church Discipline Act, 356, 365.  
     not necessary to issue before letters of request, 371-2.
- COMMON LAW, Ecclesiastical, 2, 6.  
     authorities for its existence, 6, 7, 8, 9.
- COMMON PRAYER, Book of, interpretation of term, 390. See PRAYER BOOK.
- COMMUNION, "Order for the," 55, 114.  
     service in First Prayer Book, 56.  
     service in Second Prayer Book of Edw. VI. and Eliz., 62.  
     change of rubric as to real presence in 1661, 66.  
     service composed of two parts, 104.  
     introductory heading to, in First and Second Prayer Books of Edw. VI., 104.  
     Sealed Books, 105.  
     introits now replaced by hymns or psalms, 105.  
     service in Prayer Books of 1549 and 1552 and Sealed Books compared, 114-131.  
     all persons of full age entitled to be admitted, 116.  
     Dr. Stephens on curate's power to reject, 117.  
     vestments, rubric of First Prayer Book, 117.  
     provisions of First Prayer Book at conclusion of service, 129.  
     in cathedrals, 129, 131.  
     all persons to communicate, 130, 131.  
     provisions of Second Prayer Book at conclusion of service, 131.  
     number of communicants necessary, 131.  
     of the sick in Prayer Books of 1549, 1552, and Sealed Books, 154  
     at burial of the dead in First Prayer Book, 160.

COMMUNION—(*continued*).

- posture of priest performing service, 178.
- ceremonies connected with, 187.
- elevation of the elements, 189.
- position of minister during, 194.
- ornamentation specially connected with, 240.
- to be thrice a year received (Canon 21), 549.
- who not to be admitted to (Canons 26, 27, 28, 29), 551.

## COMMUNION TABLE, 241.

## CONFESSION at Morning Prayer, 87.

- general, at Communion Service, 124.
- Injunction of Edw. VI., 481.

## CONFIRMATION in First Prayer Book, 57.

- in Prayer Books of 1549-1552 and Sealed Books, 148.
- Canons 60 and 61, 567.

## CONSECRATED BUILDINGS. See BUILDINGS.

## CONSECRATION of place for Public Worship, 14, 19.

- can be destroyed, 19, 20, 22.
- of churchyard and vaults, 24.
- without consent of incumbent valid, 32.
- prayer of, in Communion Service, 126, 195-202.

## CONTEMPT, definition of, 293.

- in Ecclesiastical Courts, 294.
- Significavit*, 295.
- special notice for, 353.

## CONTENTS of First and Second Prayer Books of Edw. VI. and Sealed Books, 72, 73, 107.

## CONVOCATION of 1661, 66.

## COPE, 216.

- Canon 24, 551.

## COSTS, 297.

- rules of Court of Arches, 352.
- judge has control of, 405.

## CREED, meaning of term, 45.

- at Morning Prayer, 90.
- the Athanasian, in First and Second Prayer Books of Edw. VI. and Sealed Books, 101.
- Discussion on Athanasian in 1689, 102.
- in Communion Service, 120.

## CRIMINAL SUITS, 298.

- ROSS, Privy Council in *Westerton v. Liddell* on 30th Canon, explaining sign of, in baptism, 50, 139, 552.
- ceremonial use of, 174, 231.
- use of, in *Purchas* case, 174.
- making sign of, 184.

CROSS—(*continued*).

- as ornamentation, 230.
- Bishop of Exeter *in re* Park Smith, 231.
- Are crosses images? 235.
- may be used as mere emblems or decoration, 235.
- attached or in proximity to Communion Table, 236.

## CRUCIFIX, ceremonial use of, 174, 236.

- use of, in Purchas case, 175.
- probably altogether illegal, 237.

## CUP for Communion to be provided, 237.

## CURACY, perpetual, 15.

## CURATE, when he has discretion in rubrics, 37.

- Canon 48, who may be, 562.

## DAILY, term to be taken literally, 85.

- services, 26, 81.

## DALMATIC, 207.

## DEACON, meaning of term, 46.

## DEAD, burial of, in First Prayer Book, 57.

- prayers for, expunged, 89.
- refusal to bury, 147.
- burial of, in Prayer Books of 1549, 1552, and Sealed Books, 159.
- prayers for, in First Prayer Book, 160.
- law relating to, 160.
- fees allowable, from whom, 161.
- of paupers, 161.
- in the chancel, 161.
- coffins, 162.
- notice to be given of, 162.
- interpolation of prayer for, 202.
- burial of, ministers not to refuse, (Canon 68), 569.

## DECORATION, and other subsidiary matters of Ornamentation, 256.

- real status of articles in question, 256.
- Dr. Tristram in *White v. Bowron*, 256.
- are of two kinds, 258.
- forbidden, 396.

## DECREE, 327.

- rules of Court of Arches, 347.

## DEGRADATION, 293.

## DEPRIVATION, 281, 289.

- Canon 122, 292, 590.
- inflicted for disabilities, 290.
- for conviction of crime and moral offences, 291.
- Ecclesiastical offences, 292.
- Dean of Arches may deprive, 292.
- Reg. *v.* Archbishop of York, 378.

## DIOCESE, interpretation of term. 350. 300.



- DODSON (Sir J.), opinion on 1 Edw. VI. c. 12, 49, 50.
- EAST, turning to, at Creeds, 203.
- ECCLESIASTICAL COMMISSIONERS, 24.  
can transfer endowments, 24.
- ECCLESIASTICAL COMMON LAW. See COMMON LAW.
- ECCLESIASTICAL COURTS, Canons 82-108, as to those belonging to the archbishops' jurisdiction, 577-584.  
Canons 109-126, as to those belonging to the jurisdiction of bishops and archdeacons, and the proceedings in them, 584-591.
- ECCLESIASTICAL LAW, definition of, 1.  
three species of, 1.  
unwritten, 6.  
its bearing on Public Worship, 9.
- ECCLESIASTICAL PERSONS, their duties, by Injunctions of Edw. VI. and Eliz., 478-482, 490-494.
- ELEVATION of paten and cup, 189.  
monition against, in *Martin v. Mackonochie*, 190.  
judgment in Privy Council, 191.  
of offertory alms, 202.
- ENACTMENTS of statutory nature, 2.  
in nature of proclamations, 2.
- EUCOLPIUM, 207.
- EVENING PRAYER, 93.  
how intituled in First and Second Prayer Books of Edw. VI. and Sealed Books, 93.  
provisions of 59th Canon as to catechising at, 93.  
commencement of service in Sealed Books and in earlier books, 94.  
the Magnificat, 95.  
service after Magnificat in First and Second Prayer Books of Edw. VI. and Sealed Books, 95.  
Creed, collects, and conclusion, 96.  
shortened order for, 99.
- EVIDENCE, 339.  
one witness not generally sufficient, 339.  
an accused may be examined, 340.  
rules of Court of Arches as to witnesses, 351.  
under Church Discipline Act, 374.  
under Public Worship Regulation Act, 387-404.  
on appeal, 407.
- EXCOMMUNICATION, 278.  
to be inflicted on minister omitting to catechise at third offence, 93.
- EXHORTATION at Morning Prayer in Second Prayer Book of Edw. VI. and Sealed Books, 87.  
in Communion Service, 120, 123, 124.  
in public baptism of infants, 134, 138.
- EXORCISM in Prayer Book of 1549, 135.

## FACULTY, 293.

for organs, 262.

definition of term, 309.

when granted, 310.

at discretion of ordinary, 311.

for what purposes, 312.

necessary for removal of unlawful ornaments, 314.

confirmatory, 316.

anomalous, 319.

dispensations to the king, 320.

licences to marry, 322.

not necessary to obey monition under Public Worship Regulation Act, 386, 405.

in certain cases unnecessary, 412.

FASTING DAYS, Act for keeping, 3 & 4 Edw. VI. c. 3, 466.

FLOWERS, 259.

FONT, 132, 227, 574.

FURNITURE, 296.

FUST (Sir H. J.) on Ecclesiastical Common Law, 8.

Judgment of, in Stone Altar Case, 241.

GENUFLEXION, 180.

GIRDLE, 206.

GOSPEL in public baptism of infants, 135.

GOWN, black, 216.

GRAVESTONES, 229.

HAMPTON COURT CONFERENCE, 65, 211.

HEARING OF CASE under Public Worship Regulation Act, 404.

HOLIDAYS, services on, 28, 547.

Act for keeping, 5 & 6 Edw. VI. c. 3, 466.

what to be done on, when there is no sermon, Injunctions Edw. VI. and Eliz., 479, 491.

harvest labour allowed on, by Injunction Edw. VI. 485.

Canon 64, 568.

HOMILIES, book of, 239.

Injunctions of Edw. VI. and Eliz., 488, 498.

HOOD, 216, 217, 551.

58th Canon as to, 238, 567.

HYMNS, 38-40, 204.

IMAGES abolished in 2nd Sess. of 1549, 56, 464.

ceremonial use of, 174.

use of, in Purchas Case, 175.

Injunctions of Edw. VI. and Eliz., 478, 500.

INCENSE, 189.

- INCUMBENT supreme in his own district, 29.  
 Resignation Act (34 & 35 Vict. c. 44), 361.  
 interpretation of term, 390.  
 limitation of proceedings against, 416.
- INGRESS OR INTROIT, 59, 105, 119.
- INHIBITION, 30, 372, 386, 408, 411.
- INJUNCTIONS, 3.  
 of Elizabeth, 40, 490.  
 of Edw. VI., 48-54, 477.
- INSCRIPTIONS, 229.
- INTROIT. See INGRESS.
- JUBILATE, 90.
- JUDGE, office of the, 340.  
 appointment and duties of, under Public Worship Regulation Act, 392.  
 has control of costs, and may issue monition, 405.  
 obedience to order or monition of, how enforced and determined, 408, 411.  
 Canons 127, 128, as to Ecclesiastical, and their surrogates, 591.
- JUDGMENT, 401, 402, 405.
- KALENDAR in First and Second Prayer Books of Edw. VI. and Sealed Books, 83.
- KISSING books of service, 176.
- KNEELING, 180, 183.  
 when allowable, 183.  
 Injunction of Elizabeth as to, 502, 503.
- LAITY, accommodation of, in church, 226.  
 position of, with regard to conduct of public worship, 265.  
 two classes, churchwardens or sidesmen and ordinary laity, 265.  
 their rights and privileges, 266.  
 duties of, as to observing order, 270.  
 attendance at public worship, 271.
- LECTURER, 307.
- LEGAL PROCEEDINGS, 323.  
 difference between civil and criminal suits, 323-326.  
 civil suits, 326.  
 citation or decree, 327.  
 service of citation, personal, *viis et modis*, 328.  
 monition, 328.  
 act on petition, 331.  
 libel, 332.  
*litis contestatio*, 335.  
 pleas, 336.  
 answers, 337.

LEGAL PROCEEDINGS (*continued*).

- evidence, 339.
- criminal suits, 340, 355.
- general nature of the articles, 342.
- pleading and proof of the charges alleged, 344.
- rules of the Court of Arches, 347.
- how initiated under Church Discipline Act, 356.
- suits in form criminal to determine civil rights, 358.
- limitation of, by Church Discipline Act, 359.
- on a hearing before a bishop, 370.
- matters within Public Worship Regulation Act, 383.
- who may initiate under Public Worship Regulation Act, 383.
- on representation under Public Worship Regulation Act, 400.
- judgment by consent, 401.
- judgment of bishop not to be considered finally deciding any question of law, 402.
- if parties will not submit to decision of bishop, 402.
- stay of, pending an appeal, 405.
- how parties can appear, and who may practise in Ecclesiastical Courts, 406.
- dean and chapter, when to be defendants, 413.
- rules for procedure and fees under Public Worship Regulation Act, 416.
- Court of Appeal, 417-428.

## LIBEL, 332.

- pleas must be clear, concise, and relevant, 332.
- not inferential and the whole case, 333.
- not necessary to plead the general law, 334.
- admissibility of pleas, 334.
- Rules of Arches Court, 334.

## LIGHTS, ceremonies or ornaments, 164.

- use of, in early times, 168.
- Injunctions of Edw. VI., as to, partly repealed by 1 Eliz. c. 2, s. 27, 168.
- use, for illumination at Holy Communion, 187.
- use, as a ceremony at Holy Communion, 187.

## LIGHTS on a retable or super-altar, 188.

- during the gospel, 188.

## LITANY, meaning of term, 44.

- in First Prayer Book of Edw. VI., 56.
- in Second Prayer Book of Edw. VI., 58-9.
- in Elizabeth's Prayer Book, 62.
- Introductory Rubric to, in First and Second Prayer Books of Edw. VI. and Sealed Books, 103.
- is a distinct service, 103.
- performance of litany, place and posture, 103.



LITANY (*continued*).

- person to perform, and manner of performance, 104.
- concluding prayers, 104.
- when to be used by First Prayer Book, 129.
- 15th Canon, when to be used, 547.

## LITIS CONTESTATIO, 335.

## LITURGY, First, of Edw. VI. 1548, 40.

- Second, of Edw. VI. 1552, 40.
- Third, of 1 Eliz. 1559, 40.
- of Church of England, 43.
- meaning of term, 43.
- history of, 47-70.
- Acts 5 & 6 Edw. VI. cc. 3, 4, and 12, 60.
- alterations made at Hampton Court conference, 65.

## LUSHINGTON (DR.) on 1 Edw. VI. c. 12, 50.

## MANCIPLE, 207.

## MATRIMONY in First Prayer-book, 57.

- in Prayer-books of 1549, 1552, and Sealed Books, 150.
- necessity for licence or banns (Canon 62), 151, 567.
- time for performing the service, 152.
- of priests and ministers, 55, 498.
- Canons 62 and 63, 567.
- who not to enter into (Canons 99 and 100), 581.
- licences and banns (Canons 101, 102, 103 and 104), 582.
- divorce (Canons 105, 106, 107, and 108), 583.

## MINISTER, where Church of England can officiate, 19.

- his position in performing service, 24, 85, 86, 119.
- vestments of, 85, 86. See VESTMENTS.
- posture of during epistle, 105.
- duty of to visit the sick, 154.
- not to preach or administer Holy Communion in private house, 159, 570.
- posture during Communion Service, 178, 195.
- position during Communion Service, 194.
- failure of, to observe directions of Prayer Book, 398.
- Act against offenders, 1 Mar. Sess. 2, c. 3, 470.
- duties of, by Injunctions of Edw. VI. 478, 479, 480, 481; and Eliz., 491-494.
- Canons 31-76, as to their ordination, function, and charge, 555-572.
- Canon 59, as to catechising, 93, 567.
- apparel of (Canon 74), 571.

## MONITION, 275, 329, 352, 405.

- procedure by and exact nature of, 330.
- admonition to simple men, deceived by malicious, 503.

## MONUMENTS, 227.

- whose permission required to erect, 228.

MONUMENTS (*continued*).

- consent of incumbent sufficient, 228.
- varieties of, 228.
- affecting structures, 229.
- whose is the property in, 230.
- non-structural, 230.

## MORNING PRAYER, 84.

- First and Second Prayer Books of Edw. VI. and Sealed Books, 85-92.
- sentences at, 86.
- exhortation at, 86.
- confession and absolution at, 86.
- commencement of in First Book of Edw. VI. 88.
- the Venite, 89.
- rubrics following the Venite in First and Second books of Edw. VI. and Sealed Books, 89, 90.
- Te Deum and Benedictus, 90.
- Jubilate and Creed, 90.
- differences in First and Second Book of Edw. VI. and Sealed Books in the portion of service following the Creed, 91.
- the collects at, 92.
- concluding prayers, 92.
- the shortened order for, 97.

## NICHOLL (Sir J.) on Ecclesiastical Common Law, 7.

## NORTH, meaning of in rubric of Communion Service, 194.

## NOTES, as to the services contained in First Book of Edw. VI., 84.

## NOTICES, 353, 369, 413.

## OFFENCES, what are cognizable in Ecclesiastical Courts, 362.

## OFFERTORY, 122.

- rubric at end of Communion Service in First Prayer Book, 129.
- elevation of, 202.

## ORATORIES, 18.

## ORDINATION, 163, 555.

## ORDINARY, definition of term, 300.

- is the bishop generally, 301.
- a peculiar is co-ordinate with bishop, 302.
- his authority given by the rubrics, 302.
- Martin *v.* Mackonochie, 302.
- his duty in consecration, 304.
- power with respect to presentees, 306.
- licence to preach, 307.
- King *v.* Archbishop of Canterbury, 307.
- faculties are at his discretion, 311.
- jurisdiction of, preserved by Public Worship Regulation Act, 412.
- Exeter reredos (Philpotts *v.* Boyd), 254, 512.

ORGANS, 259, 261.

may be necessary in collegiate chapels, 264.

ORNAMENTS, rubric in Sealed Books, 85.

definition of, 220, 397.

history of the law of, 222.

rubric of Elizabeth's Prayer Book, 223.

ornaments section of Act of Uniformity, 223.

Injunctions of Eliz., 223, 496.

commission on disorder in chancels, 224.

Advertisements of, 1564, 224.

Prayer Book and Canons of 1604, 224.

unconnected with the chancel, 225.

structural, 225.

specially connected with the Holy Communion, 240.

decoration and other subsidiary matters of ornamentation, 256.

faculty required for removal of unlawful, 314.

alteration in or addition to, 394.

and furniture synonymous, 396.

use or permission of use of unlawful ornaments, 397.

neglect to use prescribed ornament or vestment, 397.

of minister of cathedral or collegiate church, 414.

PARAPHRASIS OF ERASMUS, Injunctions of Edw. VI. and Eliz. as to, 480, 485, 491.

PARISH, Interpretation of Term, 391.

PARISHIONERS to provide vestments, 219.

interpretation of term, 391, 392.

PARKER (Archbishop), on differences between Prayer Books of Eliz. and the second of Edw. VI., 61.

PARLIAMENT, assembling of in Nov. 1547, 54.

1 & 2 Sessions of 1549, 55.

PARTITION between chancel and church, 240.

PENALTIES, ecclesiastical, 274.

to which both clergy and laity are amenable, 275.

limited to clerical offences, 280.

anomalous, 293.

criminal suits, 298.

PENANCE, 276.

PEWS, power of churchwardens as to, 268.

PHILLIMORE (Sir R.), on Ecclesiastical Common Law, 8.

on effect of usage, 12.

opinion on 1 Edw. VI. c. 12, 49.

on bowing, 177.

on ornaments, 258.

PLACE for Public Worship, 13-24.

PLACE of person conducting Public Worship, 24-26.

“accustomed,” what is, 25.

PLEAS, 332, 336.

rules relating to, 332, 336, 349.

admissibility of, 334.

PRACTICE. *See* LEGAL PROCEEDINGS.

PRAYER BOOK, its directions must be observed, 35.

First of Edw. VI., 55, 56.

differences between that of 1549 and the present one, 56, 57.

Second of Edw. VI., 58.

differences between First and Second Prayer Books of Edw. VI., 59.

edition of Eliz., 1559, 61.

differences between Eliz. and Edw. VI.'s Second Prayer Book, 61.

description of in 1 Eliz. c. 2, s. 3, 63.

folio series of, for clergy, 64.

further alterations, 64.

Oxford quarto edition of 1848, 69-70.

changes in the present reign, 70.

the First and Second Prayer Books of Edw. VI., and the Sealed Books compared, 71. *See* PREFACE, CONTENTS, MORNING PRAYER, &c.

notes as to the services contained in First Prayer Book of Ed. VI., 84.

book of to be provided (80th Canon), 239.

failure of minister to observe directions of, 398.

representation of such failure, how to be made, 399.

Act to amend tables of lessons and psalter contained in the, 35 & 36 Vic. c. 37, 475.

PRAYER, bidding, form of, 489, 505.

PREACHERS, Act against offenders of, Mar. sess. 2, c. 3, 470. *See* SERMON.

PREFACE, of First and Second Prayer Books of Edw. VI., 74.  
of Sealed Books, 76.

PREFERMENT, interpretation of term, 359.

PRESENTATION, (Canons 109-119), 261, 270, 585.

PRIEST, where he has discretion in rubrics, 36.

meaning of term, 46.

marriage of, allowed in 1549, 55.

5 & 6 Edw. VI. c. 12, on marriage of, 60.

posture of during Communion Service, 178, 195.

position of, during Communion Service, 194.

Injunctions of Eliz. on marriage of, 498. *See* MINISTER.

PRIVY COUNCIL, on 1 Edw. VI. c. 12, 50.

on bowing, 178.

its powers as Ecclesiastical Court of Appeal, 296.

who may practice before, 407.



PRIVY COUNCIL (*continued*).

- Constituted Court of Appeal in Ecclesiastical Causes, 421.
- what persons form Judicial Committee of, 422.
- what matters may be referred to, 422.
- power to grant a rehearing, 424.

PROCEDURE. *See* LEGAL PROCEEDINGS.

## PROCESSIONS, 170.

- 18th Injunction of Elizabeth, as to, 171.
- charges in *Elphinstone v. Purchas*, 171.
- decision of Dean of Arches in above case, 175.
- injunction of Edw. VI, 484.

## PROCLAMATIONS of February and March, 1548, 55.

## PROCTOR, (Canon 129), 592.

## PROMOTER, in criminal suits, 340.

- who may be under Public Worship Regulation Act, 394.

## PROSTRATION, meaning of, 182.

## PROTESTATIONS, enjoined by advertisements of Eliz., 512.

## PSALMS, metrical version of, 41.

## PSALTER added in 1662, 110.

## PUBLIC WORSHIP, place for holding, 13.

- early statutes relating to, 13.
- consecration of place for, 14.
- time of holding, 26.
- to be held every day, 26, 81.
- directions of rubrics respecting, 26.
- 13 & 14 Car. II., c. 4, 27.
- Bennett v. Bonaker*, 28.
- on holy days, 28.
- hours for, to be determined by ordinary, 29.
- by what person to be conducted, 29.
- Canons 35 and 36, 29.
- general conduct of, 35.
- language to be used in, 35, 81, 482.
- directions of Prayer Book must be followed in, 35.
- disturbers of (Canon 111), 261, 270, 585.
- Injunction of Eliz., directing how ministers are to read at, 503.
- Advertisement of Eliz. for administration of Prayer and Sacraments, 508.
- Canon 14, as to form of service on Sundays and holidays, 547.

## PUBLIC WORSHIP REGULATION ACT, 382-416.

- resemblances and differences of Public Worship Regulation Act and Church Discipline Act, 387.

## PULPIT, 107, 226, 574.

PUNISHMENT. *See* PENALTY.PURIFICATION OF WOMEN. *See* CHURCHING OF WOMEN.

## READING DESK, 227.

- RECONCILIATION, 23.
- RECONSECRATION, when required, 20.  
     Parker *v.* Leach, 21.  
     30 & 31 Vict. c. 133, 22.
- REGISTRAR, 406.
- REGISTRY BOOKS, and box to hold them, 238, 482, 493.  
     minister to keep register of christenings, weddings, and marriages  
     (Canon 70), 238, 570.
- REMEDIES, ecclesiastical, 274. *See* LEGAL PROCEEDINGS.
- REPAIRS, 225, 269, 483, 574.
- REPRESENTATION under Public Worship Regulation Act, 383, 393,  
     399, 400.
- REQUEST, LETTERS OF, 369, 371.
- REREDOS, 254, 412.
- RESPONSES, meaning of term, 46.
- RETABLE, 188, 247. *See* TABLE (COMMUNION).
- REVERENCE, acts of, 177.
- RITE, definition and true import of, 111.  
     history of, 114.
- RITUAL, definition of, 112.  
     rule in *Westerton v. Liddell* does not apply to, 113.
- ROMANISM, cry of, after First Prayer Book, 57.  
     Injunction of Edw. VI. against, 477.
- RUBRICS, 3.  
     admit some discretion, 36, 204.  
     for vestments and ornamentation, 85, 86, 117.  
     following the Venite, 89, 90.  
     following Athanasian Creed in First and Second Prayer Books of  
     Edw. VI., 101.  
     concluding, in Communion Service, 128.  
     baptismal, 139.  
     preceding Confirmation Service, 149.  
     in Common Prayer must be followed, 170.  
     construction of rubrics relating to Holy Communion, 178.
- RULE IN WESTERTON *v.* LIDDELL as to ceremonies, 35, 113, 170.
- SACRAMENT, definition of, 112.  
     history of, 114.  
     all persons to communicate, 130, 131.  
     how to be administered, 130.  
     not to be administered in private, save in urgent cases, 158.  
     Injunction of Edw. VI. as to, 480.  
     Advertisement of Eliz., 508.  
     not to be refused at the hand of unpreaching ministers, 566.
- SAVOY CONFERENCES, 66.
- SCHOOLMASTERS, 500.
- SCREEN between chancel and body of church, 240.

SCHOOLMASTERS (Canons 77, 78, and 79), 572.

SEA, order of prayers to be used at, added in 1662, 110.

SEALED BOOKS, 69, 71.

instruction concerning the service of the Church, 79. See PRE-

FACE, CONTENTS, MORNING PRAYER, EVENING PRAYER, &c.

SENTENCES at morning prayer, 87.

SEQUESTRATION, 283, 386.

civil and criminal, 284.

Bunter *v.* Cresswell, 285.

bishop entitled to the profits of living during, 286.

Act of 1871, 287.

SERVICE, meaning of term, 44.

Ordination, 56.

how morning and evening began in First Prayer Book, 56.

morning and evening in Second Prayer Book of Edw. VI. and  
Eliz., 62.

to be in English, 35, 81.

daily, 26, 81.

a bell to be rung before, 81.

commencement of, in First Book of Edw. VI., 88.

Shortened Forms of, 96.

Communion, 104.

order of prayer to be used at sea, 110.

making pauses in, 185.

language to be used for, 35, 81, 482.

SERMON, a part of Communion Service, 106.

may it be used with other services, 106.

where to be delivered, 107.

prayer before, and bidding prayer, 107.

Injunctions of Edw. VI. and Eliz. as to, 478, 491.

what to be used in place of, by Injunctions of Edw. VI. and Eliz.,  
479, 491.

Advertisements of Eliz. on doctrine and preaching, 507.

Canons 45, 46, 47, 49, 50, 51, 52, 53, 54, 56, as to preachers, 562.

form of prayer to be used before (Canon 55), 565.

SHORTENED ORDER for Morning and Evening Prayer, 9, 69.

SIDESMEN, 265. See CHURCHWARDENS.

SIGNIFICAVIT, 295.

SIMONY, Injunctions of Edw. VI. and Eliz., 488, 497.

oath against, under 40th Canon, 559.

SINGING, 38, 204.

Hutchins *v.* Denziloe & Loveland, 38.

practice of primitive church, 39.

practice of Church of Rome, 39.

practice of Reformers, 39.

SINGING (*continued*).

practice of Church of England after Reformation, 39.  
statutes of Edw. VI., 40.

Injunctions of Eliz., 40.

comments of Dr. Stephens on Hutchins *v.* Denziloe & Loveland, 42.

SOVEREIGN, in this realm, highest power under God, 490.

supremacy of, in causes Ecclesiastical, 543, 544.

SPECIAL CASE, provisions for, in Public Worship Regulation Act, 386,  
402, 404.

SPONSORS (Canon 29), 132.

address and questions to, 136.

STATUTES, 3.

cannot be repealed by contrary usage, 11.

early, relating to public worship, 13.

of Edw. VI., 40.

STEPHENS (Dr.) on curates' power to admit to Holy Communion, 117.

STOLE, 207.

SUFFRAGES, meaning of term, 46.

SUPER-ALTAR. See RETABLE.

SUPREMACY, ACT OF, 1559, 61.

SUPREME COURT OF JUDICATURE, 427.

SUSPENSION, *ab ingressu ecclesiæ*, 277, 411.

*ab officio*, or *ab officio et a beneficio*, 280, 411.

who can suspend and deprive, 281.

SURPLICE, 216, 217, 551.

by 58th Canon to be provided, 237, 567.

TABLE (COMMUNION), ornaments and nature of, 118, 241.

rubric in Prayer Books of 1549 and 1552, and Sealed Books, 118.

position of minister at, 119, 196.

north side of, 195.

the "Stone Altar case," 241.

of Edward VI., 243.

must be a table in popular sense, 245.

movable and of wood, 246.

flat and not in form of a tomb, 247.

appendages to, 247.

inferior high altars, 247. See RETABLE.

candlesticks only allowable for lighting, 249.

coverings for, 250.

cloths must be plain, 251.

credence tables, 251.

Injunction of Eliz. for, 504.

Canon 82, 227, 244, 250, 259, 574.

TABLETS, 229.



TE DEUM, 90.

TEXTS OF SCRIPTURE, 259.

TINDAL, Chief Justice, on Ecclesiastical Common Law, 7.

TITLE-PAGE of First and Second Prayer Books of Edward VI., and  
Sealed Books, 71.

TUNIC, 207.

UNIFORMITY ACT OF 1662, 13 & 14 Car. II. c. 4, 3, 68, 446.

Act of 1559, 1 Eliz. c. 2, 61, 439.

both Acts inserted in Prayer Books, 74.

Act of 1548, 2 & 3 Edw. VI. c. 1, 429.

Act of 1552, 5 & 6 Edw. VI. c. 1, 436.

Act of 1872, 35 & 36 Vict. c. 35, 460.

USAGE, effect of, 10, 11, 12.

contrary usage cannot repeal a statute, 11.

optional, 203.

VAULTS, 24.

VENITE, 89.

VERSICLES, meaning of term, 45.

in connection with epistle and gospel, 105.

VESTMENTS, direction of Prayer Book of 1549, 57.

differences between Edw. VI.'s Second Prayer Book and Elizabeth's, 62.

rubric in Prayer Book of 1552, and Sealed Books, 85, 86.

rubric in Communion Service of First Prayer Book, 117, 129.

explication of terms, 206.

history of, 208.

First Prayer Book of Edw. VI., 208.

Second Prayer Book of Edw. VI., 209.

Elizabeth's Prayer Book, 209.

Act of Uniformity of 1559, c. 2, s. 25, 209.

decision in *Westerton v. Liddell* as to, 209.

Injunctions of Eliz., 210, 501.

Elizabeth's commission of 1559, 210.

Advertisements of 1564, 210, 511.

Hampton Court, conference of, 1604, 211.

canons of 1603-4, 212.

Act of Uniformity of 1662 and present Prayer Book, 213.

decision of Privy Council in *Hebbert v. Purchas*, 214.

*Hebbert v. Purchas* irreconcilable with *Westerton v. Liddell*, 215.

at the Holy Communion, 215.

cope and surplice only legal, 216.

of services other than Communion, 216.

judgment of Bishop of Exeter on Rev. W. Blunt, 218.

to be provided by parishioners, 219.

VESTMENTS (*continued*).

neglect to use prescribed, 397.

Canon 58 as to, 86, 237, 567.

## VISITATION, royal, of 1547, 54.

of the sick in First Prayer Book, 57.

of the sick in Prayer Books of 1549, 1552, and Sealed Books, 152

Canon 67, 154, 260, 569.

## WAFER BREAD, 193.

## WATER, holy, 186.

## WINDOWS, stained, 259.

## WINE, by whom to be provided at Communion Service, 131.

20th Canon as to, 237, 549.

## WITNESSES. See EVIDENCE.

## WORSHIP. See PUBLIC WORSHIP.

THE END.

# A C A T A L O G U E

OF

NEW AND IMPORTANT

## L A W   W O R K S

PUBLISHED AND SOLD BY

### STEVENS & HAYNES,

Law Publishers, Booksellers & Exporters,

BELL YARD, TEMPLE BAR,

LONDON.

---

BOOKS BOUND IN THE BEST BINDINGS.

Works in all Classes of Literature supplied to Order.

*FOREIGN BOOKS IMPORTED.*

LIBRARIES VALUED FOR PROBATE, PARTNERSHIP,  
AND OTHER PURPOSES.

LIBRARIES OR SMALL COLLECTIONS OF BOOKS PURCHASED.

*A large Stock of Reports of the various Courts of England, Scotland,  
and Ireland always on hand, in very superior condition.*

Catalogues and Estimates Furnished, and Orders Promptly Executed.

NOTE.—We make a special point of supplying books in fine order, of the best editions, and bound in the best and most substantial binding. The slight advance thus created in the cost of a set or series of Treatises or Reports is more than compensated for by their durability and increased permanent value.

We respectfully request that special care be taken to direct all letters intended for us to the above address.

## INDEX OF SUBJECTS.

|                                  | PAGE  |                                          | PAGE   |
|----------------------------------|-------|------------------------------------------|--------|
| ADMIRALTY LAW—                   |       | COLLISIONS AT SEA—                       |        |
| Jones . . . . .                  | 20    | Kay . . . . .                            | 27     |
| Kay . . . . .                    | 23    | United States District Reports . . . . . | 43     |
| Parsons . . . . .                | 41    | COLONIAL LAW—                            |        |
| United States Reports . . . . .  | 43    | Forsyth . . . . .                        | 19     |
| AGENCY—                          |       | COMMENTARIES—                            |        |
| Story . . . . .                  | 42    | Kent . . . . .                           | 40     |
| AMERICAN CONSTITUTIONS . . . . . | 36    | Story . . . . .                          | 42, 43 |
| AMERICAN REPORTS . . . . .       | 36-44 | COMPANIES LAW—                           |        |
| AMERICAN TREATISES . . . . .     | 36-44 | Brice . . . . .                          | 7      |
| APPELLATE PROCEEDINGS—           |       | Browne . . . . .                         | 35     |
| Powell . . . . .                 | 41    | Buckley . . . . .                        | 22     |
| ARBITRATION—                     |       | Reilly's Reports . . . . .               | 22     |
| Morse . . . . .                  | 40    | <i>See</i> MAGISTERIAL LAW.              |        |
| ARTICLED CLERKS—                 |       | COMPENSATION—                            |        |
| <i>See</i> STUDENTS.             |       | Lloyd . . . . .                          | 20     |
| ASSAULTS—                        |       | CONFLICT OF LAWS—                        |        |
| <i>See</i> MAGISTERIAL LAW.      |       | Story . . . . .                          | 42     |
| BAILMENTS—                       |       | Wharton . . . . .                        | 44     |
| Story . . . . .                  | 42    | Woolsey . . . . .                        | 45     |
| BALLOT ACT—                      |       | CONSTABLES—                              |        |
| Bushby . . . . .                 | 32    | <i>See</i> POLICE GUIDE.                 |        |
| BANKRUPTCY—                      |       | CONSTITUTIONAL LAW AND                   |        |
| Roche and Hazlitt . . . . .      | 11    | HISTORY—                                 |        |
| BIBLIOGRAPHY . . . . .           | 35    | Forsyth . . . . .                        | 19     |
| BILLS OF LADING—                 |       | Taswell-Langmead . . . . .               | 15     |
| Kay . . . . .                    | 24    | Story . . . . .                          | 43     |
| BILLS OF SALE—                   |       | CONTRACTS—                               |        |
| Roche and Hazlitt . . . . .      | 11    | Kay . . . . .                            | 25     |
| BIRTHS AND DEATHS REGIS-         |       | Langdell . . . . .                       | 40     |
| TRATION—                         |       | Parsons . . . . .                        | 41     |
| Flaxman . . . . .                | 47    | Story . . . . .                          | 43     |
| CANADA—                          |       | CONVEYANCING, Practice of—               |        |
| Code of . . . . .                | 38    | Copinger . . . . .                       | 47     |
| Harrison . . . . .               | 39    | CONVEYANCING, Principles of—             |        |
| Wotherspoon . . . . .            | 44    | Deane . . . . .                          | 13     |
| CARRIERS—                        |       | COPYRIGHT—                               |        |
| <i>See</i> RAILWAY LAW.          |       | Copinger . . . . .                       | 17     |
| „ SHIPMASTERS.                   |       | CORPORATIONS—                            |        |
| CHANCERY—                        |       | Brice . . . . .                          | 7      |
| <i>See</i> EQUITY.               |       | COVENANTS FOR TITLE—                     |        |
| CHARITABLE TRUSTS—               |       | Rawle . . . . .                          | 42     |
| Cooke . . . . .                  | 21    | CREW OF A SHIP—                          |        |
| CHURCH AND CLERGY—               |       | Kay . . . . .                            | 26     |
| Brice . . . . .                  | 8     | CRIMINAL LAW—                            |        |
| CIVIL LAW—                       |       | Bishop . . . . .                         | 38     |
| <i>See</i> ROMAN LAW.            |       | Green . . . . .                          | 39     |
| CODES—                           |       | Wharton . . . . .                        | 44     |
| Canada . . . . .                 | 38    | <i>See</i> MAGISTERIAL LAW.              |        |
| New York . . . . .               | 41    | CROWN LAW—                               |        |
|                                  |       | Forsyth . . . . .                        | 19     |
|                                  |       | Hall . . . . .                           | 30     |
|                                  |       | Taswell-Langmead . . . . .               | 15     |
|                                  |       | Kelyng . . . . .                         | 34     |



INDEX OF SUBJECTS—*continued.*

|                                    | PAGE |                                   | PAGE |
|------------------------------------|------|-----------------------------------|------|
| CUSTOM AND USAGE—                  |      | GAME LAWS—                        |      |
| Browne . . . . .                   | 10   | Locke . . . . .                   | 31   |
| CUSTOMS—                           |      | See MAGISTERIAL LAW.              |      |
| See MAGISTERIAL LAW.               |      | HACKNEY CARRIAGES—                |      |
| DAMAGES—                           |      | See MAGISTERIAL LAW.              |      |
| Mayne . . . . .                    | 29   | HISTORY—                          |      |
| DICTIONARY—                        |      | Taswell-Langmead . . . . .        | 15   |
| Brown . . . . .                    | 14   | HYPOTHECATION—                    |      |
| DIGESTS—                           |      | Kay . . . . .                     | 25   |
| Abbott . . . . .                   | 36   | INDEX TO PRECEDENTS—              |      |
| Paschal . . . . .                  | 41   | Copinger . . . . .                | 35   |
| DIVORCE—                           |      | INJUNCTIONS—                      |      |
| Bishop . . . . .                   | 38   | Joyce . . . . .                   | 18   |
| Browning . . . . .                 | 17   | INSTITUTE OF THE LAW—             |      |
| DOMESTIC RELATIONS—                |      | Brown's Law Dictionary . . . . .  | 14   |
| Schouler . . . . .                 | 42   | INSURANCE—                        |      |
| DUTCH LAW—                         |      | May . . . . .                     | 40   |
| Van Der Keesel . . . . .           | 30   | Bennett . . . . .                 | 37   |
| Cape of Good Hope Reports. . . . . | 30   | Bigelow. . . . .                  | 38   |
| ECCLESIASTICAL LAW—                |      | Phillips . . . . .                | 41   |
| Brice . . . . .                    | 8    | INTERNATIONAL LAW—                |      |
| EDUCATION ACTS—                    |      | Clarke . . . . .                  | 46   |
| See MAGISTERIAL LAW.               |      | Wharton . . . . .                 | 44   |
| ELECTION LAW & PETITIONS—          |      | Woolsey . . . . .                 | 45   |
| Bushby . . . . .                   | 32   | INTOXICATING LIQUORS—             |      |
| Hardcastle . . . . .               | 32   | See MAGISTERIAL LAW.              |      |
| O'Malley and Hardcastle . . . . .  | 32   | JOINT STOCK COMPANIES—            |      |
| EQUITY—                            |      | See COMPANIES.                    |      |
| Bispham . . . . .                  | 38   | JUDICATURE ACT—                   |      |
| Choyce Cases . . . . .             | 34   | Griffith . . . . .                | 30   |
| Pemberton . . . . .                | 31   | Indermaur . . . . .               | 16   |
| Snell . . . . .                    | 12   | JURISPRUDENCE—                    |      |
| Story . . . . .                    | 42   | Forsyth. . . . .                  | 19   |
| EXOPPEL—                           |      | LAND TENURES—                     |      |
| Bigelow. . . . .                   | 37   | Finlason . . . . .                | 21   |
| EVIDENCE—                          |      | LARCENY—                          |      |
| See USAGES AND CUSTOMS.            |      | See MAGISTERIAL LAW.              |      |
| EXAMINATION OF STUDENTS—           |      | LAW DICTIONARY—                   |      |
| Indermaur . . . . .                | 16   | Brown . . . . .                   | 14   |
| EXTRADITION—                       |      | LAW REVIEW—                       |      |
| Clarke . . . . .                   | 46   | American . . . . .                | 36   |
| See MAGISTERIAL LAW.               |      | Southern . . . . .                | 43   |
| FACTORIES—                         |      | LICENSES—                         |      |
| See MAGISTERIAL LAW.               |      | See MAGISTERIAL LAW.              |      |
| FIRE INSURANCE—                    |      | LEADING CASES—                    |      |
| Bennett . . . . .                  | 37   | Common Law . . . . .              | 16   |
| FISHERIES—                         |      | Equity and Conveyancing . . . . . | 16   |
| See MAGISTERIAL LAW.               |      | Mercantile Law . . . . .          | 39   |
| FIGURES—                           |      | Sales . . . . .                   | 40   |
| Brown . . . . .                    | 21   | Contracts . . . . .               | 40   |
| FOGGERY—                           |      | LEGACY AND SUCCESSION—            |      |
| See MAGISTERIAL LAW.               |      | Hanson . . . . .                  | 17   |
| FRUDULENT CONVEYANCES—             |      |                                   |      |
| May . . . . .                      | 22   |                                   |      |

INDEX OF SUBJECTS—*continued.*

|                                 | PAGE  |                                | PAGE  |
|---------------------------------|-------|--------------------------------|-------|
| LEGAL REMEDIES—                 |       | OVER-RULED CASES—              |       |
| High . . . . .                  | 39    | Bigelow . . . . .              | 37    |
| LIFE ASSURANCE—                 |       | PARLIAMENT—                    |       |
| Bigelow . . . . .               | 38    | Taswell-Langmead . . . . .     | 15    |
| Bliss . . . . .                 | 38    | PARTNERSHIP—                   |       |
| Buckley . . . . .               | 22    | Story . . . . .                | 42    |
| Reilly . . . . .                | 22    | PASSENGERS—                    |       |
| LIQUIDATION with CREDITORS—     |       | <i>See</i> MAGISTERIAL LAW.    |       |
| Roche and Hazlitt . . . . .     | 11    | ,, RAILWAY LAW.                |       |
| And <i>see</i> BANKRUPTCY.      |       | PASSENGERS AT SEA—             |       |
| LLOYD'S BONDS . . . . .         | 21    | Kay . . . . .                  | 27    |
| MAGISTERIAL LAW—                |       | PATENTS—                       |       |
| Greenwood and Martin . . . . .  | 6, 48 | Curtis . . . . .               | 38    |
| MALICIOUS INJURIES—             |       | Fisher . . . . .               | 39    |
| <i>See</i> MAGISTERIAL LAW.     |       | Wynne's Bovill Case . . . . .  | 17    |
| MANDAMUS—                       |       | PAWNBROKERS—                   |       |
| High . . . . .                  | 39    | <i>See</i> MAGISTERIAL LAW.    |       |
| MARINE INSURANCE—               |       | PERSONAL PROPERTY—             |       |
| Parsons . . . . .               | 41    | Schouler . . . . .             | 42    |
| MARRIAGE AND DIVORCE—           |       | PERSONATION AND IDENTITY—      |       |
| Browning . . . . .              | 17    | Moriarty . . . . .             | 20    |
| Bishop . . . . .                | 38    | PILOTS—                        |       |
| MARRIED WOMEN'S PRO-            |       | Kay . . . . .                  | 27    |
| PERTY ACTS—                     |       | POLICE GUIDE—                  |       |
| Griffith . . . . .              | 45    | Greenwood and Martin . . . . . | 6, 48 |
| MASTER AND SERVANT—             |       | PRACTICE BOOKS—                |       |
| <i>See</i> SHIPMASTERS & SEA-   |       | Bankruptcy . . . . .           | 11    |
| MEN.                            |       | Companies Law . . . . .        | 22    |
| MASTERS AND SERVANTS—           |       | Compensation . . . . .         | 20    |
| <i>See</i> MAGISTERIAL LAW.     |       | Conveyancing . . . . .         | 47    |
| MEDICAL JURISPRUDENCE—          |       | Damages . . . . .              | 29    |
| Wharton and Stillé . . . . .    | 44    | Divorce . . . . .              | 17    |
| MERCANTILE LAW . . . . .        | 39    | Election Petitions . . . . .   | 32    |
| <i>See</i> SHIPMASTERS & SEA-   |       | Equity . . . . .               | 31    |
| MEN.                            |       | Injunctions . . . . .          | 18    |
| ,, STOPPAGE IN TRANSITU.        |       | Judicature Act . . . . .       | 36    |
| MINES—                          |       | Magisterial . . . . .          | 6, 48 |
| Nevada Reports . . . . .        | 40    | Railways . . . . .             | 20    |
| <i>See</i> MAGISTERIAL LAW.     |       | Rating . . . . .               | 10    |
| MUNICIPAL LAW—                  |       | PRIORITY—                      |       |
| Harrison . . . . .              | 39    | Robinson . . . . .             | 31    |
| NEGLIGENCE—                     |       | PROBATE—                       |       |
| Campbell . . . . .              | 35    | Hanson . . . . .               | 17    |
| Shearman and Redfield . . . . . | 42    | PROHIBITION—                   |       |
| NEW TRIALS—                     |       | High . . . . .                 | 39    |
| Hilliard . . . . .              | 39    | PUBLIC WORSHIP—                |       |
| OBLIGATIONS—                    |       | Brice . . . . .                | 8     |
| Brown's Savigny . . . . .       | 45    | QUESTIONS FOR STUDENTS—        |       |
|                                 |       | Indermaur . . . . .            | 16    |
|                                 |       | QUO WARRANTO—                  |       |
|                                 |       | High . . . . .                 | 39    |

INDEX OF SUBJECTS—*continued.*

|                                       | PAGE   |                                  | PAGE |
|---------------------------------------|--------|----------------------------------|------|
| RAILWAYS—                             |        | SHIPPING—                        |      |
| Godefroi and Shortt . . . . .         | 20     | Parsons . . . . .                | 41   |
| Lloyd . . . . .                       | 20     | SLANDER—                         |      |
| Redfield . . . . .                    | 42     | Townshend . . . . .              | 43   |
| <i>See</i> MAGISTERIAL LAW.           |        | SOCIETIES—                       |      |
| RATING—                               |        | <i>See</i> CORPORATIONS.         |      |
| Browne . . . . .                      | 10     | STAGE CARRIAGES—                 |      |
| REAL PROPERTY—                        |        | <i>See</i> MAGISTERIAL LAW.      |      |
| Deane . . . . .                       | 13     | STATUTE OF FRAUDS—               |      |
| REGISTRATION OF BIRTHS                |        | Throop . . . . .                 | 43   |
| AND DEATHS—                           |        | STOPPAGE IN TRANSITU—            |      |
| Flaxman . . . . .                     | 47     | Houston . . . . .                | 31   |
| REPORTS—                              |        | Kay . . . . .                    | 25   |
| American . . . . .                    | 36-44  | STUDENT'S BOOKS—                 |      |
| Bellewe . . . . .                     | 33     | Brown . . . . .                  | 14   |
| Brooke . . . . .                      | 34     | Deane . . . . .                  | 13   |
| Cape of Good Hope . . . . .           | 30     | Griffith . . . . .               | 45   |
| Choyce Cases . . . . .                | 35     | Indermaur . . . . .              | 16   |
| Cooke . . . . .                       | 34     | Snell . . . . .                  | 12   |
| Cunningham . . . . .                  | 33     | Taswell-Langmead . . . . .       | 15   |
| Election Petitions . . . . .          | 32     | Woolsey . . . . .                | 45   |
| Finlason . . . . .                    | 31     | SUCCESSION DUTIES—               |      |
| Fisher . . . . .                      | 39     | Hanson . . . . .                 | 17   |
| Idaho . . . . .                       | 39     | TELEGRAPH CASES—                 |      |
| Insurance Cases . . . . .             | 37, 38 | Allen . . . . .                  | 36   |
| Kelyng, John . . . . .                | 34     | TOWNS IMPROVEMENTS—              |      |
| Kelynge, William . . . . .            | 34     | <i>See</i> MAGISTERIAL LAW.      |      |
| Nebraska . . . . .                    | 40     | TRADE MARKS—                     |      |
| Nevada . . . . .                      | 40     | Browne . . . . .                 | 38   |
| New York . . . . .                    | 41     | TREASON—                         |      |
| Oregon . . . . .                      | 41     | Kelyng . . . . .                 | 34   |
| Reilly . . . . .                      | 22     | Taswell-Langmead . . . . .       | 15   |
| United States . . . . .               | 43     | TRIALS—                          |      |
| Washington Territory . . . . .        | 43     | Queen <i>v.</i> Gurney . . . . . | 31   |
| RITUAL—                               |        | ULTRA VIRES—                     |      |
| Brice . . . . .                       | 8      | Brice . . . . .                  | 7    |
| ROMAN LAW—                            |        | UNITED STATES—                   |      |
| Brown's Analysis of Savigny . . . . . | 45     | Abbott . . . . .                 | 36   |
| Hadley . . . . .                      | 39     | Andrew's Manual . . . . .        | 37   |
| SALES—                                |        | And <i>see</i> AMERICAN TREA-    |      |
| Hilliard . . . . .                    | 39     | TISES.                           |      |
| Langdell . . . . .                    | 40     | USAGES AND CUSTOMS—              |      |
| SALVAGE—                              |        | Browne . . . . .                 | 10   |
| Jones . . . . .                       | 20     | VERBAL AGREEMENTS                |      |
| Kay . . . . .                         | 28     | Throop . . . . .                 | 43   |
| SANITARY ACTS—                        |        | VOLUNTARY CONVEYANCES—           |      |
| <i>See</i> MAGISTERIAL LAW.           |        | May . . . . .                    | 22   |
| SEA SHORE—                            |        | WAR POWERS—                      |      |
| Hall . . . . .                        | 30     | Whiting . . . . .                | 44   |
| SHIPMASTERS AND SEAMEN—               |        |                                  |      |
| Kay . . . . .                         | 23     |                                  |      |

This day is published, in One thick Volume, 8vo., price 42s., strongly bound in cloth

# A MAGISTERIAL AND POLICE GUIDE

BEING

The Statute Law, including the Session of 1874, with Notes and References to the most recently decided Cases, relating to the Procedure, Jurisdiction, and Duties of Magistrates and Police Authorities

## IN THE METROPOLIS AND IN THE COUNTRY.

With an Introduction showing the General Procedure before Magistrates both in Indictable and Summary Matters;

And a COPIOUS INDEX to the WHOLE WORK.

By HENRY C. GREENWOOD,

STIPENDIARY MAGISTRATE FOR THE DISTRICT OF THE STAFFORDSHIRE POTTERY AND

TEMPLE C. MARTIN, OF THE SOUTHWARK POLICE COURT.

"This handsome volume aims at presenting 'a comprehensive magisterial handbook for the whole of England.' It is prefaced by an introduction treating of proceedings before justices in indictable offences and summary matters, which is likely to be useful to the numerous gentlemen who, without the slightest knowledge of their duties, find themselves called upon to administer the law. The plan of the authors is to arrange alphabetically under separate heads the various subjects treated of. These appear to include the whole range of matters within the cognizance of magistrates, and we are bound to say that we have not detected the omission of any statutory provision we have looked for.

"As regards the arrangement of matter under each head, the idea of the authors is to place in the text the provisions of the statute law creating offences, and to throw into notes the sections relating to procedure, and the cases. This mode of arrangement seems to us excellent, and is well carried out. Another praiseworthy feature of the work is that the sections of the statutes quoted in the text are generally given *verbatim*, and where they are summarized attention is drawn to the fact by the use of brackets.

"As to the care with which the work has been executed, a somewhat minute examination of three or four of the divisions enables us to speak, on the whole, favourably."—*Solicitors' Journal*.

"This work, which with much propriety is dedicated to Sir Thomas Henry, sprang out of an intention on the part of the authors to compose a book containing and explaining the statutes relating exclusively to the metropolis, for the use of the Metropolitan Police Courts. The authors soon discovered that the metropolis is regulated by general as well as by special statutes, and then it occurred to them that their scheme might well be enlarged, and that a comprehensive handbook for all justices

of the peace might usefully supersede a volume intended only for a limited area of police jurisdiction. Hence we have the book before us, and, on inspecting it, we cannot but rejoice that the original plan of the authors has undergone expansion in a manner we have explained. In shape and form the book is most convenient, and the elegance and accuracy of the volume are peculiarly attractive.

"The authors begin with an Introduction divided into two parts: one relating to indictable offences, the other to summary matters. In these, 'judgment,' 'process,' 'witnesses,' 'hearing,' 'enforcing judgments,' 'action against justices,' 'statute case,' 'certiorari,' 'habeas corpus,' and 'mandamus or rule,' are fully discussed. The main body of the work is under titles arranged in alphabetical order, commencing with 'accessories' and ending with 'witchcraft.' Under each title is given the Acts prohibitive or mandatory relating to it, with such sections as regulate procedure and other matters of that nature are collected into foot-notes along with decisions cited. As far as possible an accurate transcript of these statutes is produced, but the less important sections are abbreviated, these are distinguished by being enclosed within brackets. In indictable offences the punishments are properly omitted, as these do not concern the justices of the peace; but the foot-notes in the case show whether the offence is triable at quarter sessions, and give provision as to bail and costs. We may add that the legislation of 1874 is incorporated in the work. There is a table of cases cited, and of statutes, and a good index is added. An appendix gives a list of the petty sessional divisions in England and Wales, with the places where petty sessions are held. We are sure that the popularity of the work will satisfy the hopes of its authors, and that it will meet with general approval."—*Solicitors' Journal*.



## THE LAW OF CORPORATIONS.

Just published, in 8vo., price 21s., cloth,

## A TREATISE ON THE DOCTRINE

OF

## ULTRA VIRES:

BEING

AN INVESTIGATION OF THE PRINCIPLES WHICH LIMIT  
THE CAPACITIES, POWERS, AND LIABILITIES

OF

## CORPORATIONS,

AND MORE ESPECIALLY OF

## JOINT STOCK COMPANIES.

BY

SEWARD BRICE, M.A., LL.D., LONDON,

*Of the Inner Temple, Barrister-at-Law.*

Here is a volume of 500 pp. upon a title to which, so far as we are aware, not even a chapter of any text-book in this country has been devoted, and to which we are quite sure no distinct heading has ever been assigned in an American Digest.

Upwards of 1100 Cases are cited in this work, of which it may be fairly assumed that few do not involve pecuniary interests of considerable magnitude. In the next decade we may be sure that the doctrine of Ultra Vires as applicable to roads, municipal and other chartered bodies in the United States, will assume a large political as well as legal importance. We welcome his pioneer volume as a fair result of the author's 'attempt, though, perhaps, nothing more,' to collect and group together more important of these various decisions. . . . This is the only work of its kind afforded the profession of either country. The English cases, many of great authority with us, are here collected and lucidly arranged. Besides the questions constantly presented to the Courts, it happens frequently that Corporation Counsel are called upon to give advice with may affect property of great value. In such an emergency this volume would be of essential service."—*American Law Review*, October 1874.

Much as one may be surprised at the confusion which clouds the doctrine of Ultra Vires, it is all the more pleasant to notice the lucid manner in which it has been handled by the author. His arrangement of the work is logical, and his treatment of the parts clear and concise. The work is arranged under four main heads. Each part appears so well and appropriately filled up. The references to decided cases are full and accurate. The work is a body of law essential as an appendix to any work on Corporations, and such as should be on the shelves of any lawyer who assumes to have a full and reliable library of modern law."—*Canada Law Journal*.

"Mr. Brice writes with knowledge and with precision; and his volume is probably as good as was possible in the present stage of the law."—*The Daily News*.

"When the reader has once got over the prejudice created by Mr. Brice's strange enmity with his subject, he will find him a guide of very great value. Full information on a difficult and unattractive subject has been collected and arranged in a manner which will be of great assistance to the seeker after

the law on a point involving the powers of a company."—*Law Journal*.

"Mr. Brice himself calls his work an attempt to reduce a vast mass of authorities to something like order, and to deduce from them some general conclusions. To our mind it is a very creditable and courageous attempt, and really of the same class as those which started our present excellent text-books in other branches of the law. But here the author has chosen for himself a subject of great difficulty, and one in which he will find it difficult to interest the general student. The doctrine of Ultra Vires is of very modern growth, and took its rise in the attempt of our Courts to make old law fit a new state of facts by using and refining upon a maxim. The doctrine is thus, as Mr. Brice says, purely the creature of judicial decisions, and for this reason it forms a most embarrassing and awkward subject for any legal writer. In this case the author has certainly worked hard, and displayed great industry and research. He has endeavoured, and that successfully, to force his subject into some logical order, and to arrange a mass of vague decisions under different heads as clearly as was possible. He has, at all events, laid the foundation for, perhaps, a more complete and systematic text-book; which at some future time, when the Courts are themselves more logical in their decisions, will be written. He has certainly called attention to a most important branch of our law, which has hitherto been much neglected. It is a branch, also, which is daily growing in importance with the growth of Corporations and the increase of Joint Stock Companies. To investigate the principles which limit their capacity, power, and liabilities, is certainly a task worthy of the undertaking by any lawyer, more especially at the present time. We congratulate Mr. Brice on his success in so far as he has gone, and look forward to the time when some future edition of his work shall, the law itself on Ultra Vires having become more settled, be considered as one of our standard works upon its own special subject."—*The Law*.

"It is an exceedingly valuable work at this time when the rights and powers of Corporations are matters of so much interest in the United States, as well as in Great Britain, and its manifold cases furnish as interesting reading to the business man generally as to the lawyer or justice."—*Boston (U. S.) Journal of Commerce*.

Nearly ready, in One Volume, Octavo,

# CHURCH AND CLERGY.

## THE LAW RELATING TO PUBLIC WORSHIP

WITH SPECIAL REFERENCE TO

Matters of Ritual and Ornamentation,

AND THE MEANS OF SECURING THE DUE OBSERVANCE THEREOF

AND CONTAINING IN EXTENSO,

WITH NOTES AND REFERENCES,

THE PUBLIC WORSHIP REGULATION ACT, 1874;

THE CHURCH DISCIPLINE ACT;

THE VARIOUS ACTS OF UNIFORMITY;

THE LITURGIES OF 1549, 1552, AND 1559,

COMPARED WITH THE PRESENT RUBRIC;

THE CANONS; THE ARTICLES;

AND THE

INJUNCTIONS, ADVERTISEMENTS, AND OTHER ORIGINAL  
DOCUMENTS OF LEGAL AUTHORITY.

By SEWARD BRICE, LL.D.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

### CONTENTS.

#### PART I.

The Substantive Law relating to the  
Conduct of Public Worship.

CHAP. I.—The Nature and Sources of Ecclesiastical Law.

- Sect. 1. Introductory.
- Sect. 2. Statutory Enactments.
- Sect. 3. The Anglican Canon Law.
- Sect. 4. Ecclesiastical Common Law.
- Sect. 5. Effect of Usage.

CHAP. II.—General matters relating to Public Worship.

- Sect. 1. Place.
- Sect. 2. Time.
- Sect. 3. Person.
- Sect. 4. The General Conduct of Public Worship.

CHAP. III.—The Liturgy of the Church of England.

- Sect. 1. Explanation of Terms.
- Sect. 2. History of the Liturgy.
- Sect. 3. The Ordinary Services.
- Sect. 4. Other portions of the Canon Prayer.

# THE LAW RELATING TO PUBLIC WORSHIP.

## CONTENTS—continued.

### CH. IV.—Rites and Sacraments.

- Sect. 1. Exact meaning and nature of.
- Sect. 2. History of.
- Sect. 3. The Holy Communion.
- Sect. 4. Other Rites and Sacraments.

### CH. V.—Cereimonial.

- Sect. 1. Explanation of Terms.
- Sect. 2. General Law relating to Cereimonial.
- Sect. 4. Ceremonies connected with the Holy Communion.
- Sect. 4. Ceremonies connected with the other Services.

### CH. VI.—Subsidiary matters pertaining to the Conduct of Public Worship.

### CH. VII.—Vestments.

- Sect. 1. Explication of Terms.
- Sect. 2. History of.
- Sect. 3. Vestments of the Holy Communion.
- Sect. 4. Vestments of the other Services.

### CH. VIII.—Ornamentation.

- Sect. 1. Definition of the Term.
- Sect. 2. History of Law relating to.
- Sect. 3. Ornamentation considered generally.
  - (a.) Structural Ornamentation.
  - (b.) Non-structural ditto.
- Sect. 4. Ornamentation specially connected with the Holy Communion.
  - (a.) Structural.
  - (b.) Non-structural.

### CH. IX.—Decoration or Ornamentation in matters not essential.

### CH. X.—The position and duties of the Laity in respect of the Conduct of Public Worship.

## PART II.

### Means for securing the proper holding and conduct of Public Worship.

### CH. I.—Punishments for Ecclesiastical Offences.

- Sect. 1. Introductory.
- Sect. 2. Punishments applicable to both Clergy and Laity.

### CHAP. I. *cont.*—Sect. 3. Punishments applicable to Clergy only.

#### Sect. 4. Anomalous Punishments.

### CHAP. II.—The Jurisdiction and Power of the Ordinary.

### CHAP. III.—Faculties.

### CHAP. IV.—Ordinary Legal Proceedings.

- Sect. 1. Ecclesiastical Courts.
- Sect. 2. Civil Suits.
- Sect. 3. Criminal Suits.
- Sect. 4. Enforcing Judgments.

### CHAP. V.—The Church Discipline Act.

- Sect. 1. General notice of.
- Sect. 2. The Statute annotated.

### CHAP. VI.—The Public Worship Regulation Act, 1874.

- Sect. 1. General notice of.
- Sect. 2. The Statute annotated.

### CHAP. VII.—The Court of Final Appeal in Ecclesiastical matters.

- Sect. 1. Appeals in Early Times.
- Sect. 2. The Privy Council.
- Sect. 3. The present High Court of Appeal.

## PART III.

### Authoritative Enactments in relation to the holding and conduct of Public Worship.

### CHAP. I.—The General Statutes of Uniformity:—

- 2 & 3 Edward VI., c. 1;
- 5 & 6 Edward VI., c. 1;
- 1 Eliz., c. 2;
- 13 & 14 Car. II., c. 4;
- 35 & 36 Vict., c. 35.

### CHAP. II.—Particular and Special Statutes relating to Public Worship.

### CHAP. III.—Enactments of a statutory nature relating to Public Worship:—

- The Injunctions of Edward VI.;
- The Injunctions of Elizabeth;
- The Advertisements of Elizabeth.

### CHAP. IV.—The Articles of Religion.

### CHAP. V.—The Canons.

This day is Published, in 8vo., Price 7s. 6d., cloth,

# THE LAW OF USAGES and CUSTOM

A Practical Law Tract.

BY J. H. BALFOUR BROWNE,

*'Of the Middle Temple, Barrister-at-Law,  
Registrar to the Railway Commissioners; Author of "The Law of Carriers," "The Medical  
Jurisprudence of Insanity," &c.*

## CONTENTS.

### CHAPTER I.

As to Customs generally.

### CHAPTER II.

As to Customs of the Country, and the Admissibility of the Proof of these.

### CHAPTER III.

As to the usages of Trade and the Laws of Evidence respecting these.

In Preparation,

## A PRACTICAL TREATISE

ON THE

# LAW RELATING TO THE RATING

OF

RAILWAY, GAS, DOCK, HARBOUR, TRAMWAY

BRIDGE, PIER, and other CORPORATIONS,

TO THE

## RELIEF OF THE POOR.

BY J. H. BALFOUR BROWNE,

*Of the Middle Temple, Barrister-at-Law;  
Author of "The Law of Usages and Customs," "The Law of Carriers," &c.*



In one thick volume, 8vo., 1873, price 30s., cloth lettered,

## THE LAW AND PRACTICE IN BANKRUPTCY;

comprising the Bankruptcy Act, 1869; the Debtors Act, 1869; the Insolvent Debtors and Bankruptcy Repeal Act, 1869; together with the General Rules and Orders in Bankruptcy, at Common Law and in the County Courts;

With the Practice on Procedure to Adjudication, Procedure to Liquidation, Procedure to Composition, and Procedure under Debtors' Summons, Scales of Costs and of Allowance to Witnesses.

Copious Notes, References, and a very full Index. Second Edition. By HENRY PHILIP ROCHE and WILLIAM HAZLITT, Barristers-at-Law, and Registrars of the Court of Bankruptcy.

### From THE LAW.

The aim of the authors in writing this book has been to make it useful to the profession, and in this they have eminently succeeded. Bringing to their task a long and varied experience of Bankruptcy law, they have been able, from their position as Registrars of the Court, also to acquire more knowledge of the practical working of the new Act than could well have been obtained by any other writer, however gifted and industrious. The last statute, which by itself looked so simple, has, from the number and complexity of the rules framed thereunder, probably surpassed all its predecessors in accumulating a mass of forms and ceremonies. Therefore it is that a book like the above becomes absolutely necessary, more especially to solicitors who have but a small practice in Bankruptcy. The portion of the work which to such will be found most useful, is that on the practical procedure; where they will find plain and minute directions as to the commencement of a Bankruptcy of Liquidation, and also as to its continuance and conclusion. There is also a special and carefully written chapter on Costs. There are included in the work all the statutes, rules, forms, and scales of costs, which can be wanted in a Bankruptcy case; while the Index is a book of itself, and seems unusually complete. The type and binding could hardly be better. Altogether we can say of this book that it is the product of hard work, by men who know of what they write, and that it is worthy to stand beside our best text-books on the shelves of every lawyer."

### From the LAW TIMES.

This work is one which has naturally carried with it more weight than any other text-book, having been written by two registrars of the Court of Bankruptcy. In practice it has been found to meet the anticipations formed concerning it, in proof of which we have now in our hands a second edition. Perhaps the most valuable feature of the work is the fulness of the practical details which enable a tyro to transact his business with tolerable security. The first half of the work comprises the Bankruptcy Act and the Debtors Act, which have been carefully and ably noted with all the decisions; and the latter half is devoted mainly to practice and procedure. The Bills of Sale Act and other two other enactments are incorporated which are frequently consulted by the bankruptcy practitioner. A very elaborate index ends the volume."

### From the LAW JOURNAL.

"The work before us also contains the Debtors Act of 1869, the Bankruptcy Repeal Act of 1869, the Absconding Debtors Act, 1869, with several other Acts and all the General Rules in Bankruptcy, printed and annotated in the same manner as the principal Act. There is also a very full collection of forms and bills of costs; but the portion of the work which is decidedly the most novel, and we imagine will prove extremely useful, is that comprised in pages 355-474, which contain an exposition by the authors on the practice on procedure to adjudication, liquidation, and composition with creditors, and on procedure under a debtors' summons. It is not often that a practising lawyer is able to turn to a book on Practice written by the judges of the particular Court to which it relates, and, as it were, stamped with the seal of authority. . . . In conclusion, we have only to say that Messrs. Roche and Hazlitt have appended to their work a very full and copious index, and that we can cordially and conscientiously recommend it to the notice of the legal profession."

### From the SOLICITORS' JOURNAL.

"In the book before us, a reader is enabled by means of large consecutive figures at the head of each margin to reach the section and cases he requires without the trouble of referring to the index. In the hurry of daily practice this will probably be found no small advantage. In the subsequent chapters on adjudication, liquidation, composition, and debtors' summons, the arrangement adopted is the convenient one for practical purposes of tracing each consecutive step of the procedure, and welding together the provisions of the Acts, Rules, and Forms, with the substance of the cases. This appears to us to be successfully accomplished, and the book, as a whole, constitutes a useful digest of the statutory and case law. As regards the former, the work appears to contain every provision relating to or connected with the subject, including even the orders made in December, 1869, transferring business then pending. The cases are taken from a wide range of reports and include a considerable number cited from MSS. notes. The index is unusually full, combining both an analysis and index; and, lastly, the type and paper are all that can be desired."

STEVENS & HAYNES, BELL YARD, TEMPLE BAR.

Just published, Third Edition, in 8vo., price 20s., cloth,

# THE PRINCIPLES OF EQUITY

Intended for the Use of Students and the Profession.

By EDMUND H. T. SNELL,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

THIRD EDITION

By JOHN R. GRIFFITH, of Lincoln's Inn, Barrister-at-Law.

In One Vol., 8vo., 1874.

\* \* *This Work has become a Standard Class-Book in England, Ireland, India, and the Colonies.*

"The second edition of this Treatise was noticed in this *Review* in October, 1872; the first edition appeared in 1868. We are glad to see evidence of its growing popularity. As a *second book* in equity are inclined to think it is the best which has been published. Mr. Snell's Treatise presents compact and (considering the size of the book) with remarkable comprehensiveness, the leading points on various heads of Equity jurisdiction. Its selection of the most recent Cases is very valuable for student and for the practitioner who desires a convenient *vade-mecum*, this book can be safely recommended."—*American Law Review*, January, 1875.

"Equity can never be made easy, nor is it desirable that it should be so; but in the fact of the large equitable jurisdiction conferred recently—that is, since 1853—upon Common Law Courts, and the extension of equitable principles and rules, to the exclusion of Common Law, contemplated by the Judicature Bill, it behoves every practitioner to know as much as possible of equity with as little expense of time as possible, and for this purpose we know of no better work than Mr. Snell's. It presents in a small compass the substance of 'The Leading Cases,' and of Story's work on 'Equity Jurisprudence;' while students will be delighted to find clear, logical, and intelligible explanations of its most mysterious process and development. The work professes to be based on the lectures of Mr. Birkbeck, but it has now reached its third edition in a few years, and is admirably noted up with the latest decisions and enactments. We find particularly good information concerning the equitable and statutable rights of married women, and the priorities of equitable and legal, registered and unregistered, mortgages. Counsel, attorney, and student, will find it a useful, and especially a *safe* guide in what it professes to teach."—*Irish Law Times*.

"This is a work well known both to students and the profession, for whose use it is intended—so well known, indeed, that it requires no word in its favour. But the appearance of a third edition of such a work at the present time gives rise to various thoughts as to the necessity of a more wide-spread study of its subject. The principles of Equity must every day become of greater importance to every lawyer, for the Judicature Act cannot but have, as one of its results, the effect of breaking

down, to a very large extent, the division between the two present branches of the Bar. Common Law lawyers will be obliged in the future to pay attention to these equitable doctrines which in the new system may enter into their most ordinary cases. The great merit of the book now under consideration is its scientific arrangement and accuracy. It, therefore, becomes a most excellent guide to those Common Law lawyers who have somehow acquired the notion that Equity is a vague term of sort of natural justice, and that it recognises rules such as are found in the Common Law. The book is indeed a most praiseworthy and successful attempt to reduce Equity Jurisprudence to a science, and as such deserves every commendation that can be bestowed; for by doing so it makes one step towards that complete codification of our law which should be the aim and the desire of every true lawyer. To the ordinary student of Equity it is indeed unnecessary for us to say one word of its praise and recommendation. But as a Common Law lawyer must before long add to his knowledge some idea of equitable doctrine, let him especially take we commend this book. He will find in it the principles of Equity set out in a really scientific and, we may say, workmanlike way, and for this reason they recognise in its method the style of thought and manner to which they have long been accustomed."—*The Law*.

"We have received the third edition of Snell's Equity, by Mr. J. R. Griffith. The statute case law has been brought down to the time of publication, and this admirable standard work therefore be used without any more assistance than is afforded by the current reports."—*Law Times*

This day is published, in one volume, 8vo., price 18s., cloth,

# PRINCIPLES OF CONVEYANCING.

AN ELEMENTARY WORK FOR THE USE OF STUDENTS.

HENRY C. DEANE, of Lincoln's Inn, Barrister-at-Law, Lecturer to the Incorporated Law Society of the United Kingdom.

Mr. Deane is one of the Lecturers of the Incorporated Law Society, and in his elementary work intended for the use of students, he embodies some lectures given at the hall of that society. It would give our readers to take them over the ground necessarily covered by Mr. Deane. The first part is devoted to Corporeal Hereditaments, and the second to Conveyancing. The latter is prefaced by a very interesting "History of Conveyancing," and for practical purposes the chapter (Ch. 2, Part II.) on Conditions of Sale is decidedly valuable. The most recent legislation is handled by Mr. Deane in connection with the old law, the Judicature Act and the Vendor and Purchaser Act both being considered in a chapter on Conditions of Sale. We might make some interesting quotations, but the work is one which those engaged in conveyancing should purchase and put on their shelves, and welcome it with the recommendations which we have already recorded."—*Law Times*.

This is, as its author states, a purely elementary volume. It may indeed be called the A B C of conveyancing. In the clearest and simplest language the student will find an outline, firstly, of the various modes of ownership in land, and, secondly, of the various modes of conveyances used in transferring land from one person to another. The second portion is founded upon lectures that were delivered by the author at the Incorporated Law Society, and is accordingly very clear and practical. The whole work is very well and thoroughly done, the law is brought down to the present day, and a clear explanation given of the scope and effect of the Vendor and Purchaser Act, 1874, which does not go on into practical operation until next year. However much the law of real property may be simplified the process can never go so far as to render the works as the present unnecessary. Mr. Deane, as we believe, succeeded in writing the very best work ever published on the abstruse subject of conveyancing; and having apparently had some experience of the stupidity of many students, he has by his language and illustrations, explained points of law in a way that cannot be misunderstood. For this reason, and as being the most elementary work explaining the elements of real property law with the principles of practical conveyancing, we can easily recommend it as a first book on the subject of which it treats. As such we should think it would be both worthy and suitable to be named as one of the books that are required to be read as preparation for the various Law Examinations."—*The Law*.

"We can confidently recommend Mr. Deane's volume on the 'Principles of Conveyancing.' It is not exhaustive, and does not pretend to go fully into details of trusts, powers, or remainders, but it fully explains the several different legal and equitable estates in land and the tenure of land, and the modes of alienation used in conveyances *inter vivos* and by will. It also fully explains the meaning and value

of the several parts of the conveyances, the covenants, conditions, provisoes, exceptions and reservations, habendums, and the proper form of recitals, &c., &c.—a point frequently neglected in other and more pretentious treatises. It contains excellent chapters on purchase deeds, leases, mortgages, settlements, and wills; and, in addition, Mr. Deane treats of conditions of sale most fully and clearly. It seems essentially the book for young conveyancers, and will, probably, in many cases supplant Williams. It is, in fact, a modern adaptation of Mr. Watkin's book on conveyancing, and is fully equal to its prototype."—*Irish Law Times*.

"A general review of the scope of Mr. Deane's volume and a perusal of several of its chapters have brought us to the conclusion that, though its contents are purely elementary, and it contains nothing which is not familiar to the practitioner, it may be extremely useful to students, and especially to those gentlemen who are candidates for the various legal examinations. There are so many questions set now on case law that they would do well to peruse this treatise of Mr. Deane's, and use it in conjunction with a book of questions and answers. They will find a considerable amount of equity case law, especially in the second part of Mr. Deane's book, which comprises in substance some lectures delivered by the author at the Law Institution."—*Law Journal*.

"As Mr. Deane's work is addressed to the rising generation of conveyancers, 'students entering upon the difficulties of real property law,' it may be presumed that he does not fear the immediate annihilation of that noble science in its traditional forms by any legislative changes. The first part of the volume is composed of a series of chapters on corporeal hereditaments, and the second part of some lectures on conveyancing recently delivered by the author at the Law Institution. It is enough to say that Mr. Deane writes clearly and to the point."—*Saturday Review*.



This day is published, in one volume, 8vo., price 21s., cloth,

# A NEW LAW DICTIONARY

AND

Institute of the whole Law ;

EMBRACING FRENCH AND LATIN TERMS, AND  
REFERENCES TO THE AUTHORITIES,  
CASES, AND STATUTES.

BY ARCHIBALD BROWN,

M.A. Edin. and Oxon, and B.C.L. Oxon, of the Middle Temple, Barrister-at-Law, Author of the "Law of Fixtures," "Analysis of Savigny's Obligations in Roman Law," &c.

"This book certainly answers to its first title, if it hardly comes up to the ambitious idea of its second. For the purposes of working law students nothing could be more useful. Besides explaining every legal term, new and old, so carefully indeed as to include the word 're,' the author gives short notes upon points of law, which are excellent specimens of clear and compressed writing. References to cases and statutes are abundant, as also to the best text writers on each subject. As an example of Mr. Brown's resolute endeavour to reduce even the vaguest and widest portions of our law to some clear first principles, we may refer readers to the title 'Fraud,' where they will find nine columns of compressed learning scientifically arranged. French and Roman law terms and doctrines are also carefully explained, while even the growth and character of the British Constitution are shortly but clearly set out under their proper headings. As already stated, the book is, for students, invaluable; but members of the profession will also find it useful for ready reference; and certainly the public could find a great deal of curious information in its pages. We are always glad to be able to speak well of a book which, like the present, shows signs of good earnest work. Here the style and execution are worthy of the great subject chosen, and more than this cannot be said in its favour. The printing is excellent for the purpose of finding any point that is sought; the general

get-up of the book could not be better; and we are glad to note that the edges are recut, thereby saving the reader much trouble and tending to keep the book itself neat and clean in appearance for a long time to come even though in constant use."—*The Law*

"In a modest preface Mr. Brown introduces us to a rather ambitious work. He has endeavoured to compress into less than four hundred pages the whole law of England, and has evidently bestowed much pains on the execution of the task. He does not, however, aim at anything higher than rendering a service to students preparing for the Bar or for the lower branches of the profession, and there can be no doubt that he has produced a book of reference which will be useful to the class he has in view. The conditions which are imposed by the very nature of such a work necessarily limit the possibility of making altogether satisfactory. If it goes thoroughly into the rules and principles of every branch of law, it becomes too bulky to answer the purpose for which it is composed; and, on the other hand, there is the danger of sacrificing completeness to compression. Mr. Brown has perhaps done about as much as any one, not a rare genius, could do in such a case, and his Dictionary will be serviceable to those who are in want of hints and references, and are content with a general idea of a law or legal principle. It is a handy book to have at one's elbow."—*Saturday Review*.



Nearly Ready, in one volume, 8vo.

# ENGLISH CONSTITUTIONAL HISTORY.

Designed as a Text-Book for Students and Others.

By T. P. TASWELL-LANGMEAD, B.C.L.,

O Lincoln's Inn, Barrister-at-Law, late Vinerian Scholar in the University of Oxford, and Tancred Student in Common Law.

## CONTENTS.

### CHAPTER I.

From the Teutonic Conquest of Britain to the Norman Conquest of England.

### CHAPTER II.

The Norman Conquest.

### CHAPTER III.

Reigns of the Norman and first Angevin Kings.

### CHAPTER IV.

Magna Charta.

### CHAPTER V.

Administrative System under the Norman and Plantagenet Kings.

### CHAPTER VI.

The Succession to the Crown.

### CHAPTER VII.

Origin of Parliament.

### CHAPTER VIII.

Growth of Parliament.

### CHAPTER IX.

Parliament under the Lancastrian and Yorkist Kings.

### CHAPTER X.

The Tudor Period—Hen. VII., Hen. VIII., Edw. VI., Mary.

### CHAPTER XI.

The Reformation in England.

### CHAPTER XII.

The Tudor Period—Reign of Elizabeth.

### CHAPTER XIII.

The Stewart Period—from the Accession of James I. to the Passing of the Petition of Right.

### CHAPTER XIV.

The Stewart Period—from the Petition of Right to the Restoration.

### CHAPTER XV.

The Stewart Period—from the Restoration to the Passing of the Bill of Rights.

### CHAPTER XVI.

Progress of the Constitution since the Revolution.

## MR. INDERMAUR'S BOOKS FOR STUDENTS.

"Mr. Indermaur's books are admirably adapted to the purpose for which they are written, and heartily recommend them to students and teachers, who will find them exceedingly convenient compendiums of the law."—*American Law Review*.

In 8vo., 1874, price 3s., cloth,

### SELF-PREPARATION FOR THE FINAL EXAMINATION.

CONTAINING A COMPLETE COURSE OF STUDY, WITH STATUTE CASES, AND QUESTIONS;

And intended for the use, during the last four months, of those Articled Clerks who read by themselves. By JOHN INDERMAUR, Solicitor (Clifford's Inn Prizeman Michaelmas Term, 1872); Author of "Epitomes of Leading Common Law, and Equity and Conveyancing Cases."

Second Edition. In 8vo., 1874, price 5s., cloth,

### AN EPITOME OF LEADING COMMON LAW CASES WITH SOME SHORT NOTES THEREON.

Chiefly intended as a Guide to "SMITH'S LEADING CASES." By JOHN INDERMAUR, Solicitor (Clifford's Inn Prizeman, Michaelmas Term, 1872).

"This should be placed in the handy-volume series of law books. Its title expresses its object—that of an Epitome and Guide to Leading Cases. The Cases themselves are stated with admirable brevity and clearness, and the notes turn out to be more full and instructive than their material size would seem to indicate. The type and binding are excellent, and in several respects this is an improvement on the first edition."—*American Law Review*.

"At the end of thirteen months from the publi-

cation of the little volume the demand has just a second edition. Last year we suggested that compiler of the book knew the value of the 'cram' in the law examinations; and the call for a second edition plainly shows that our suspicion is correct. One case has been added, and also references to the original reports of the several cases; otherwise, the book is a mere reprint, and a glad at it with a knowledge of its popularity affords an exact view of the art of examination as used in 'Final.'"—*The Law Journal*.

Second Edition, in 8vo., 1874, price 6s., cloth,

### AN EPITOME OF LEADING CONVEYANCING AND EQUITY CASES;

WITH SOME SHORT NOTES THEREON, FOR THE USE OF STUDENTS.

By JOHN INDERMAUR, Solicitor, Author of "An Epitome of Leading Common Law Cases."

"We have received the second edition of Mr. Indermaur's very useful Epitome of Leading Conveyancing and Equity Cases. The work is very well done."—*Law Times*.

"This is a work prepared expressly for the use of students who have to go through examinations. It is, in fact, simply what it pretends to be: notes of the leading cases, written and arranged in such a way as to assist the memory of the learner and serve as a guide through the larger works. We

cannot say more in favour of it than by pointing out that it is just such a compilation as we result if a diligent student were to go through text-books on which it is founded, and make up his own notes and observations. The author has saved him this trouble, and has put within a small compass much knowledge and learning, which must be acquired for the purposes of an examination."—*Law*.

## THE NEW JUDICATURE ACTS.

In preparation, in 8vo.,

### THE STUDENT'S GUIDE TO THE SUPREME COURT OF JUDICATURE ACT,

AND THE RULES THEREUNDER;

Being a book of Questions and Answers intended for the use of Law Students.

JOHN INDERMAUR, Solicitor, Author of "Self-preparation for the Final Examination," and "Epitomes of Leading Common Law, and Equity and Conveyancing Cases."

In one volume, 8vo., 1870, price 18s., cloth lettered,

## THE LAW OF COPYRIGHT,

Works of Literature and Art; including that of the Drama, Music, Engraving, Sculpture, Painting, Photography, and Ornamental and Useful Designs; together with International and Foreign Copyright, with the Statutes relating thereto, and References to the English and American Decisions. By WALTER ARTHUR COPINGER, of the Middle Temple, Barrister-at-Law.

A book that is certainly the most complete treatise upon the complex subject of copyright which has ever been published in England."—*Athenaeum*.

A work much needed, and which he has done exceedingly well."—*American Law Review*.

We make no question that Mr. Copinger's well-devised, well-written, and useful treatise will become a standard work."—*Law Journal*.

The book is a thoroughly good one: there is scarcely a decision of any importance left un-

noticed, and the law in its bearings is fairly and judiciously treated."—*The Bookseller*.

"In conclusion we refer our readers to this capital book on Copyright. The reader will find in it citations on the latest cases bearing on the subject, chapters on International Copyright, and the best and newest opinions on the subject so very important to authors and to publishers."—*The Publishers' Circular*.

Second Edition, in one thick volume, crown 8vo., price 20s., cloth,

## THE PROBATE, LEGACY, AND SUCCESSION DUTY ACTS:

Comprising 36 Geo. III. cap. 52; 45 Geo. III. cap. 28; 55 Geo. III. cap. 184; and 16 & 17 Vict. cap. 51; with an Introduction, copious Notes and References to all the decided Cases in England, Scotland and Ireland, to Michaelmas Term 1870; together with an Appendix of Statutes, Forms, Tables of Duties, and a full Index. By ALFRED HANSON, Esq., Comptroller of Legacy and Succession Duties.

It is the only complete book upon a subject of great importance, but which does not come within the regular course of professional study, and therefore requires to be read up when a case having reference to it comes into the solicitor's office.

Mr. Hanson is peculiarly qualified to be the reader at such a time. Hence, a volume without a rival."—*Law Times*.

"Since Mr. Hanson produced his first edition he has been appointed Comptroller of Legacy and Succession Duties. His book is in itself a most useful one; its author knows every in and out of the subject, and has presented the whole in a form easily and readily handled, and with good arrangement and clear exposition."—*Solicitors' Journal*.

In 8vo., 1873, price 10s. 6d., cloth,

## THE BOVILL PATENT.

A collection of the Summings-up and Judgments in the Litigation under the Patent of the 5th June, 1849, granted to the late G. H. BOVILL for Improvements in the Manufacture of Flour. With an Introduction and some Observations by W. W. WYNNE, Attorney-at-Law.

*Table of Contents:* Introduction—Judgment of the Court of Exchequer in *Bovill v. Pimm* (30 Jan. 1850)—The Specification under the Patent of 1849—The case upon that Specification—The Experiments at Bedford—*Bovill v. Keyworth* (at Nisi Prius, Jan. 1856)—*Bovill v. Keyworth* (Motion for New Trial, 28 May. 1857)—*Bovill v. Goodier* (Master of the Rolls, April, 1866)—*Bovill v. Goodier* (Trial before Willes, J., Dec. 1866)—*Bovill v. Crate* (Vice-

Chancellor Wood, June, 1867)—*Bovill v. Cowan* (Master of the Rolls, July, 1867)—*Bovill v. Smith* (Vice-Chancellor Wood, Nov. 1867)—*Bovill v. Goodier* (Trial before Byles, J., Feb. 1868)—*Bovill v. Cowan* (Lord Cairns, C., July, 1868)—*Bovill v. Smith* (Lord Cairns, C., Dec. 1868)—*Bovill v. Goodier* (Appeal for New Trial, before Lord Hatherley, C., Dec. 1868)—*Bovill v. Finch* (C. P.).

In 8vo., 1872, price 12s., cloth,

## A EXPOSITION OF THE LAWS OF MARRIAGE AND DIVORCE.

As administered in the Court for Divorce and Matrimonial Causes, with the Method of Procedure in each kind of Suit; Illustrated by Copious Notes of Cases. By ERNST BROWNING, of the Inner Temple, Barrister-at-Law.



## THE LAW OF INJUNCTIONS.

In two volumes, royal 8vo., 1872, price 70s., cloth,

## THE LAW AND PRACTICE OF INJUNCTIONS

EMBRACING ALL THE SUBJECTS IN WHICH

## COURTS OF EQUITY AND COMMON LAW

HAVE JURISDICTION.

By WILLIAM JOYCE,

OF LINCOLN'S INN, BARRISTER-AT-LAW.

## REVIEWS.

"A work which aims at being so absolutely complete, as that of Mr. Joyce upon a subject which is of almost perpetual recurrence in the Courts, cannot fail to be a welcome offering to the profession; and, doubtless, it will be well received and largely used, for it is as absolutely complete as it aims at being. . . . This work is, therefore, eminently a work for the practitioner, being full of practical utility in every page, and every sentence, of it. . . . We have to congratulate the profession on this new acquisition to a digest of the law, and the author on his production of a work of permanent utility and—fame."—*Law Magazine and Review*.

"Mr. Joyce has produced not a treatise but a complete and compendious *exposition* of the Law and Practice of Injunctions both in equity and common law.

"Part III. is devoted to the practice of the Courts. Contains an amount of valuable and technical matter nowhere else collected.

"Mr. Joyce's work, within the limits which he has assigned himself, is well done. He has been evidently diligent in the collection of cases, and the points decided are stated with accuracy, and with more fulness of detail than in any work on injunctions with which we are familiar. It cannot fail to be useful in instructing practitioners in the proper employment of this much abused method of procedure."—*American Law Review*.

"Mr. Joyce has produced a clear, scientific, and thorough treatise upon the subject of injunction which, unlike most English works, will be nearly as useful to the American as to the English practitioner.

"We doubt if there can be a single case of any note found upon injunctions in the English law that not cited in these volumes."—*Chicago Legal News*.

"This work, considered either as to its matter or manner of execution, is no ordinary work. It is complete and exhaustive treatise both as to the law and the practice of granting injunctions. It must supersede all other works on the subject. The terse statement of the practice will be found of incalculable value. We know of no book as suitable to supply a knowledge of the law of injunctions to our common law friends as Mr. Joyce's exhaustive work. It is alike indispensable to members of the Common Law and Equity Bars. Mr. Joyce's great work would be a casket without a key unless accompanied by a good index. His index is very full and well arranged. We feel that this work is destined to take its place as a standard text-book, and the text-book on the particular subject of which it treats. The author deserves great credit for the very great labour bestowed upon it. The publishers, as usual, have acquired themselves in a manner deserving of the high reputation they bear."—*Canada Law Journal*.

"From these remarks it will be sufficiently perceived what elaborate and painstaking industry, as well as legal knowledge and ability, has been necessary in the compilation of Mr. Joyce's work. No labour has been spared to save the practitioner labour, and no research has been omitted which could tend towards the elucidation and exemplification of the general principles of the Law and Practice of Injunctions."—*Law Journal*.

"He does not attempt to go an inch beyond the for which he has express written authority; he allows the cases to speak, and does not speak for them.

"The work is something more than a treatise on the Law of Injunctions. It gives us, the general law on almost every subject to which the process of injunction is applicable. Not only English, but American decisions are cited, the aggregate number being 3,500, and the statutes cited 160, whilst the index is, we think, the most elaborate we have ever seen—occupying nearly 200 pages. The work is probably entirely exhaustive."—*Law Times*.



In one volume, royal 8vo., 1869, price 30s., cloth lettered,

# CASES AND OPINIONS ON CONSTITUTIONAL LAW, AND VARIOUS POINTS OF ENGLISH JURISPRUDENCE.

*Collected and Digested from Official Documents and other Sources ;*

WITH NOTES.

By WILLIAM FORSYTH, M.A., Q.C.,

*Standing Counsel to the Secretary of State in Council of India,*

Author of "Hortensius," "History of Trial by Jury," "Life of Cicero," etc., late  
Fellow of Trinity College, Cambridge.

## From the CONTEMPORARY REVIEW.

We cannot but regard with interest a book which, within moderate compass, presents us with the opinions or *responsa* of such lawyers and statesmen as Somers, Holt, Hardwicke, Mansfield, and, to come down to our own day, Lyndhurst, Abinger, Erskine, Cranworth, Campbell, St. Leonards, Willes, Chelmsford, Cockburn, Cairns, and the present Lord Chancellor Hatherley. At the end of each chapter of the 'Cases and Opinions,' Mr. Forsyth has added notes of his own, containing a most excellent summary of all the law bearing on the branch of his subject to which the 'Opinions' refer. . . . Our space precludes us from dwelling upon the contents of this work at any greater length, but we think we have said enough to show that it is worthy of a place on the book-shelves of all statesmen, and all who take an interest in constitutional, or rather, national and colonial questions."

## From the LAW MAGAZINE and LAW REVIEW.

Mr. Forsyth has largely and beneficially added to our legal stores. His work may be regarded as in some sense a continuation of 'Chalmers's Opinions of Eminent Lawyers.' . . . The constitutional relations between England and her colonies are becoming every day of more importance. The work of Mr. Forsyth will do more to make these relations perfectly clear than any which has yet appeared. Henceforth it will be the standard work of reference in a variety of questions which are constantly presenting themselves for solution both here and in our colonies. . . . Questions of colonial law no means occupy an exclusive share of the volume. . . . Among other questions on which 'Opinions' are given, and of which careful summaries and generalisations have been added by Mr. Forsyth, are those relating to vice-admiralty jurisdiction and piracy; the prerogatives of the Crown in relation to treasure trove, land in the colonies, mines, cession of territory, &c.; the power of courts-martial, extra-territorial jurisdiction, allegiance, the *lex loci* and the *lex fori*, extradition, appeals from the colonies. The volume bears marks of extreme care and regard to accuracy, and in every respect a valuable contribution to constitutional law."

## From the CANADA LAW JOURNAL.

"Mr. Forsyth at the present juncture has done good service not only to his profession, but to all men who take any interest in public affairs, and we therefore hope that those for whom the book is especially intended will not be backward in giving to it that support which the industry and ability of its author, and the public spirit and enterprise of its publishers, so well deserve."

## From the LAW TIMES.

"This one volume of 560 pages or thereabouts is a perfect storehouse of law not readily to be found elsewhere, and the more useful because it is not abstract law, but the application of principles to particular cases. Mr. Forsyth's plan is that of classification. He collects in separate chapters a variety of opinions bearing upon separate branches of the law. Thus, the first chapter is devoted to cases on the common law, and the law applicable to the colonies; the second to the ecclesiastical law relating to the colonies; the third to the powers and duties, civil and criminal liabilities, of governors of colonies; the next to vice-admiralty jurisdiction and piracy; the fifth to certain prerogatives of the Crown: such as lands in the colonies, grants, escheats, mines, treasure trove, royal fish, felon's goods, writ *ne exeat regno*, proclamation, cession of territory, and creation of courts of justice; the sixth chapter contains opinions on martial law and courts-martial; the seventh on extra-territorial jurisdiction; the eighth on the *lex loci* and *lex fori*; the ninth on allegiance and aliens; and then successively on extradition; on appeals from the colonies; on the revocation of charters; on the Channel Islands; on the nationality of a ship, and other matters relating to ships; on the power of the Crown to grant exclusive rights of trade; on writs of habeas corpus; on certain points relating to the criminal law; and lastly, on miscellaneous subjects, such as the declaration of war before hostilities; on the right of war, booty and prize, and on the grant of a marriage licence. . . . This is a book to be read, and therefore we recommend it not to all lawyers only, but to every law student. The editor's own notes are not the least valuable portion of the volume."

In one thick volume, 8vo., 1869, price 32s., cloth,

## THE LAW OF RAILWAY COMPANIES.

Comprising the Companies Clauses, the Lands Clauses, the Railways Clauses Consolidation Acts, the Railway Companies Act, 1867, and the Regulation of Railways Act, 1868; with Notes of Cases on all the Sections, brought down to the end of the year 1868; together with an Appendix giving all the other material Acts relating to Railways, and the Standing Orders of the Houses of Lords and Commons; and a copious Index. By HENRY GODEFROI, of Lincoln's Inn, and JOHN SHORTT, of the Middle Temple, Barristers-at-Law.

"The title of this book is the best possible explanation of its contents. Here we have all the statutes affecting Railway Companies, with the standing orders of Parliament, in a volume exquisitely printed, and of most convenient size and form. We have also, what in effect to the practitioner is a complete manual of reference of all the decided cases on Railway Law, together with an index of so copious and accurate a nature, as to render the discovery of every section and every authority easy in the highest degree. . . . We find pages of authorities on 'transfer of shares,' 'calls,' 'forfeiture of shares,' '*sci. fa.*,' 'Lloyd's bonds,' 'contracts by companies,' and 'dividends.' Then

comes a mass of matter relating to the voluntary and compulsory acquisition of lands by Railway Companies, while the 'compensation' cases stretch over some fifty pages. So also under the statute, there are a dozen pages on the powers and duties of Railway Companies in the construction of their works, while the liability of the Companies as carriers of passengers and goods is also elucidated in the most elaborate style. The 'Rating of Railways' adds several pages of authorities. . . . I believe that we have said enough to show that this book will prove to be of pre-eminent value to practitioners, both before Parliamentary committees and in the Courts of Law and Equity."—*Law Journal*

Second Edition, 1870, in 8vo., price 16s., cloth,

## THE LAW OF COMPENSATION FOR LANDS, HOUSES, &c.

Under the Lands Clauses, Railways Clauses Consolidation and Metropolitan Acts, & with a full Collection of Forms and Precedents. Second Edition (much enlarged) By EYRE LLOYD, of the Inner Temple, Barrister-at-Law.

"Few branches of the law lying within so small a compass affect so many and such important interests as that which gives compensation for lands compulsorily taken for the purpose of public improvement, or private enterprise for a public benefit, and for injuries done to other private properties by the construction of the necessary works. The cases decided upon the questions that arise for solution in the application of this law are very numerous, and many of them very difficult; and a collection of them well arranged, with the principles they determine clearly stated appended to the

statute, could not fail to be cordially welcomed all concerned in properties they affected, whether lawyers or land valuers. It is not therefore surprising that Mr. Lloyd's admirable treatise, so exhaustive as it is, should have passed so rapidly to a second edition. But short as is the time since made its first appearance, it has sufficed to produce quite a crop of new decisions, all of which have been carefully noted up. The volume contains a valuable collection of practical precedents."—*Law Times*.

In 8vo., price 2s. 6d.,

## MORIARTY ON PERSONATION AND DISPUTED IDENTITY AND THEIR TESTS.

In a handy volume, crown 8vo., 1870, price 10s. 6d., cloth,

## THE LAW OF SALVAGE,

As administered in the High Court of Admiralty and the County Courts; with Principal Authorities, English and American, brought down to the present time and an Appendix, containing Statutes, Forms, Table of Fees, etc. By EDWIN JONES, of Gray's Inn, Barrister-at-Law.

"This book will be of infinite service to lawyers practising in the maritime law courts and to those engaged in shipping. In short, Mr. Jones's book is a complete guide, and is full of information upon all phases of the subject, tersely and clearly written. It will be quite as useful to, as it is as much needed by, the American lawyer as the English, because the salvage laws of America and England are much alike, and Mr. Jones makes constant reference to American authorities. The book is all the more welcome because the subject upon which it treats is but little understood except by a favoured few. Now, however, if interested people remain ignorant it is their own fault. Mr. Jones has treated a very complicated and difficult subject in a simple and concise manner, and his success is commensurate with

his simplicity of style."—*Liverpool Journal of Commerce*.

"An admirable treatise on an important branch of jurisprudence is compiled by Mr. Edwin Jones of Gray's Inn, Barrister-at-Law, who, in a compact volume, gives us a very comprehensive statement of 'The Law of Salvage,' as administered in the High Court of Admiralty and the County Courts; with the principal authorities, English and American, brought down to the present time, and an Appendix containing statutes, forms, tables of fees, &c. Mr. Jones has consulted a wide range of cases and systematised with much skill and clearness the leading principles deducible from numerous judgments and precedents, both here and in the United States. His work is likely to become a text-book on the law in question."—*Daily News*.

In 8vo., 1872, price 9s., cloth,

## THE RULE OF THE LAW OF FIXTURES.

Second Edition, embracing references to English, Scotch, Irish, and American Decisions.

By ARCHIBALD BROWN, M.A. Edin. and Oxon. and B.C.L. Oxon., of the Middle Temple, Barrister-at-Law.

"It is a good and very sensible and readable book for the practical and common sense English and American lawyer. It takes up a difficult subject, begins at the very beginning, tracing the decisions in the order of time, and showing how they gradually ended a principle here, then another there, until finally a system is built up, somewhat incoherent, but good enough for all practical purposes, and enabling the lawyer, to use our author's words, 'to arise upon Modern Cases.' We have read it with much zest, and greatly admire it. . . . We recommend it as being an exhaustive compilation."—*The Southern Law Review*.

"Great industry has been spent in reconciling numerous decisions on a very difficult branch of law, and even in illustrating it by references to American cases. . . . In one respect Mr. Brown

seems admirably adapted to the task of writing on the law of fixtures. He is strongly convinced of the influence of history upon law. In his opening sentence he tells us that 'it has been said of history that it finds its entablature in law; it may conversely be said of law that it finds its explanation in history.' The sentence is a good opening upon a subject which owes so much of its law to arbitrary rules rather than general principles as fixtures. Mr. Brown proceeds to trace the effect of history on his subject in a passage which is very *à propos*:— . . . . . Mr. Brown's seventh and last chapter will be found to contain a most serviceable enumeration of the recent cases, arranged according as the conflict was between landlord and tenant, mortgagor and mortgagee, and so on."—*Law Journal*.

In 8vo., 1867, price 1s., sewed,

## LLOYD'S BONDS:

THEIR NATURE AND USES.

By HENRY JEFFERD TARRANT, of the Middle Temple, Barrister-at-Law.

In 8vo., 1870, price 7s. 6d., cloth,

## THE HISTORY OF THE LAW OF TENURES OF LAND IN ENGLAND AND IRELAND.

By W. F. FINLASON, of the Middle Temple, Barrister-at-Law.

Mr. W. F. Finlason has done good service in publishing a concise, well-written history of the law of tenures of land in England and Ireland, with particular reference to inheritable tenancy, leasehold tenancy, tenancy at will, and tenant right.

Confining himself to the facts of legal history, he has collected and presented, in an admirably compact form, all the really useful information it contains."—*Observer*.

In 8vo., 1867, price 16s., cloth,

## THE CHARITABLE TRUSTS ACTS, 1853, 1855, 1860; THE CHARITY COMMISSIONERS JURISDICTION ACT, 1862; THE ROMAN CATHOLIC CHARITIES ACTS:

Together with a Collection of Statutes relating to or affecting Charities, including the Mortmain Acts, Notes of Cases from 1853 to the present time, Forms of Declarations of Trust, Conditions of Sale, and Conveyance of Charity Land, and a very copious Index. Second Edition.

By HUGH COOKE and R. G. HARWOOD, of the Charity Commission.

Charities are so numerous, so many persons are directly or indirectly interested in them, they are so much abused, and there is such a growing desire to rectify those abuses and to call in the aid of the Commissioners for a more beneficial application of the funds, that we are not surprised to receive a

second edition of a collection of all the statutes that regulate them, admirably annotated by two such competent editors as Messrs. Cooke and Harwood, whose official experience peculiarly qualifies them for the task."—*Law Times*.



In 8vo., 1871, price 21s., cloth,

## A TREATISE ON THE STATUTES OF ELIZABETH AGAINST FRAUDULENT CONVEYANCES,

*The Bills of Sale Registration Acts, and the Law of Voluntary  
Dispositions of Property generally.*

By H. W. MAY, B.A. (Ch. Ch. Oxford), and of Lincoln's Inn, Barrister-at-Law.

"This treatise has not been published before it was wanted. The statutes of Elizabeth against fraudulent conveyances have now been in force for more than three hundred years. The decisions under them are legion in number, and not at all times consistent with each other. An attempt to reduce the mass of decisions into something like shape, and the exposition of legal principles involved in the decisions, under any circumstances, must have been a work of great labour, and we are pleased to observe that in the book before us there has been a combination of unusual labour with considerable professional skill. . . . We cannot conclude our notice of this work without saying that it reflects great credit on the publishers as well as the author. The facilities afforded by Messrs. Stevens and Haynes for the publication of treatises by rising men in our profession are deserving of all praise. We feel assured that they do not lightly lend their aid to works presented for publication, and that in consequence publication by such a firm is to some extent a guarantee of the value of the work published."—*Canada Law Journal*.

"Examining Mr. May's book, we find it constructed with an intelligence and precision which render it entirely worthy of being accepted as a guide in this confessedly difficult subject. The subject is an involved one, but with clean and clear handling it is here presented as clearly as it could be. . . . On the whole, he has produced a very useful book of an exceptionally scientific character."—*Solicitors' Journal*.

"The subject and the work are both very good. The former is well chosen, new, and interesting; the latter has the quality which always distinguishes original research from borrowed labours."—*American Law Review*.

"We are happy to welcome his (Mr. May's) work as an addition to the, we regret to say, brief catalogue of law books conscientiously executed. We can corroborate his own description of his labours, 'that no pains have been spared to make the book as concise and practical as possible, without doing so at the expense of perspicuity, or by the omission of any important points.'"—*Law Times*.

In the Press, Second Edition, in 8vo.,

## THE LAW AND PRACTICE UNDER THE COMPANIES ACTS,

1862, 1867, 1870;

## THE LIFE ASSURANCE COMPANIES ACTS,

1870, 1871, 1872;

AND OTHER ACTS RELATING TO JOINT STOCK COMPANIES,

Together with Rules, Orders, and Forms, &c. &c. By H. BURTON BUCKLEY, M.A., of Lincoln's Inn, Barrister-at-Law, and Fellow of Christ's College, Cambridge.

\* \* *In the preparation of the Second Edition the Reports have been carefully re-searched, and numerous authorities added. Table A. of The Companies Act, 1862, is now printed with Notes, in which many points not noticed in the First Edition are discussed. The authorities, including those in the Albert and European Arbitrations, are brought down to the date of publication.*

## EUROPEAN ARBITRATION.

In Parts, price 7s. 6d. each, sewed,

## LORD WESTBURY'S DECISIONS.

Reported by FRANCIS S. REILLY, of Lincoln's Inn, Barrister-at-Law.

## ALBERT ARBITRATION.

In Parts, price 7s. 6d. each, sewed,

## LORD CAIRNS'S DECISIONS.

Reported by FRANCIS S. REILLY, of Lincoln's Inn, Barrister-at-Law.



IN THE PRESS.

## THE LAW

RELATING TO

## SHIPMASTERS AND SEAMEN.

THEIR APPOINTMENT, DUTIES, POWERS, RIGHTS,  
LIABILITIES AND REMEDIES.

BY JOSEPH KAY, M.A., Q.C.,

OF TRIN. COLL. CAMBRIDGE, AND OF THE NORTHERN CIRCUIT;  
SOLICITOR-GENERAL OF THE COUNTY PALATINE OF DURHAM; ONE OF THE JUDGES OF THE COURT OF  
RECORD FOR THE HUNDRED OF SALFORD;  
AND AUTHOR OF "THE SOCIAL CONDITION AND EDUCATION OF THE PEOPLE  
IN ENGLAND AND EUROPE."

## ANALYSIS OF CONTENTS.

## PART I.

## The Public Authorities.

- CH. I.—The Board of Trade: its General Functions  
with reference to Masters and Seamen.  
CH. II.—Local Marine Boards.  
CH. III.—Mercantile Marine Offices.  
CH. IV.—Naval Courts.

## PART II.

The Appointment, Certificates, &c.,  
of the Master.

- CH. I.—Who may appoint or succeed him, and how  
long his authority continues.  
CH. II.—His Qualifications.  
CH. III.—His Examination and Certificates.  
CH. IV.—In what cases Colonial Certificates are valid.  
CH. V.—His Remuneration.  
CH. VI.—Who may remove him, or cancel or suspend  
his Certificate.  
CH. VII.—His Offences.  
CH. VIII.—Legal Procedure for infliction of  
Penalties, etc.

## PART III.

## The Voyage.

## Duties and Responsibilities of the Master.

- CH. I.—The Master's general duties and authorities  
on the Voyage.  
CH. II.—His duty to see that the Ship is seaworthy.  
Sect. 1. The Master's duty to see that the  
Ship is seaworthy.

CHAP. II. Sect. 2. What seaworthiness means in  
(cont.) Marine Insurance.

Sect. 3. Seaworthiness as regards Master,  
Crew, and Pilot.

Sect. 4. Seaworthiness as regards hull,  
rigging, and stores.

CHAP. III.—His duties with respect to receiving, stow-  
ing, and taking care of the Cargo.

See PART IV., CHAP. 2.

CHAP. IV.—His duty in the preparation of the Ship  
for sea.

CHAP. V.—His duties when the Ship has to proceed  
to a Foreign Port and load there.

CHAP. VI.—His duty to obtain the necessary Clear-  
ances, &c.

CHAP. VII.—What Documents he must procure and  
keep.

CHAP. VIII.—His duty to carry proper Colours.

CHAP. IX.—His duties after all is ready to Sail.

CHAP. X.—When he is bound to set Sail on the Voyage.

Sect. 1. Duty of Master to set Sail on the  
day fixed by Charter-party and Policy.

Sect. 2. Consequences of not Sailing ac-  
cording to the terms of the Policy.

Sect. 3. Consequences of not Sailing ac-  
cording to the terms of the Charter-  
party.

Sect. 4. Demurrage for delay in Loading  
or Unloading.

CHAP. XI.—When he must sail with Convoy.

CHAP. XII.—His duty not to deviate.

Sect. 1. What it is to deviate, and the  
consequences of doing so.

Sect. 2. Change of Voyage, and its effect  
on the Policy.

# THE LAW RELATING TO SHIPMASTERS AND SEAMEN.

## ANALYSIS OF CONTENTS—continued.

CHAP. XII. Sect. 3. When Master may stop at the usual intermediate Ports without a deviation.

Sect. 4. In what order the Master must visit the Ports of Discharge so as to avoid a deviation, when the Ports of Discharge are, or when they are not specifically named in the Policy.

Sect. 5. It is not necessary to Sail to all the Ports named in the Policy.

Sect. 6. When the Master may revisit a Port, or sail backwards and forwards from one to the other without deviation.

Sect. 7. What Ports he may visit and trade at; and how he may do so under the Licence Clauses without deviation.

Sect. 8. For what purposes he may visit Ports which are within the Licence Clauses without deviation.

Sect. 9. When trading at a Port is a deviation.

Sect. 10. When cruising, chasing, or attacking is a deviation.

CHAP. XIII.—His duty not to delay.

Sect. 1. The consequence of delay as respects the Charterer and the Owner of the Cargo.

Sect. 2. When delay in commencing or prosecuting the Voyage is equivalent to deviation, and discharges the Underwriter.

CHAP. XIV.—What circumstances justify or excuse a delay or a deviation.

Sect. 1. Usage.

Sect. 2. Perils insured against.

Sect. 3. Moral or physical force.

Sect. 4. Making a Port to refit.

Sect. 5. Making a Port in order to recruit, or to procure fresh hands or provisions.

Sect. 6. Stress of Weather.

Sect. 7. Endeavour to [avoid Capture or imminent peril.

Sect. 8. Endeavour to join Convoy.

Sect. 9. Succouring Ships in Distress.

CHAP. XV.—His duty not to commit Barratry.

Sect. 1. What Barratry is, and by whom it may be committed.

Sect. 2. Statutable provisions for the discouragement of Barratry.

CHAP. XVI.—His duties in case of a Collision.

(See PART XII., CHAP. 8.)

CHAP. XVII.—His duties to the Underwriters on abandonment.

CHAP. XVIII.—His duties in a Port of Discharge

Sect. 1. His duties to his Employers

Sect. 2. His duties to the Mercantile Marine Office Superintendents.

CHAP. XIX.—His duties to the authorities of the Harbour.

CHAP. XX.—The Master's Protests.

### PART IV.

#### The Master's Duties and Powers respect to the Cargo.

CHAP. I.—Generally:

Sect. 1. As Agent of the Shipowner

Sect. 2. As Agent of the Owners of the Cargo.

CHAP. II.—His Duties with respect to Receipt, Stowing, and Taking Care of the Cargo.

CHAP. III.—When he may Hypothecate the Cargo.  
(See PART VIII., CHAP. 5.)

CHAP. IV.—When he may Sell it.

CHAP. V.—When he should Tranship it.

Sect. 1. As Agent of the Shipowner.

Sect. 2. As Agent of the Owners of the Cargo.

CHAP. VI.—Freight.

Sect. 1. What it is, and when it is payable.

Sect. 2. When Freight, so called, is payable in advance.

Sect. 3. How much Freight is payable.

Sect. 4. Pro rata Freight, what it is when it is payable.

Sect. 5. The Rules of the Admiralty with respect to Freight.

CHAP. VII.—His lien on the Cargo.

Sect. 1. What it is, and when it exists.

Sect. 2. For what amount of Freight the lien may be enforced.

Sect. 3. What lien the Owner and Master have when the Ship is Chartered.

Sect. 4. How the lien may be lost or extinguished.

CHAP. VIII.—His duties with reference to Delivery.

### PART V.

#### Bills of Lading.

CHAP. I.—What a Bill of Lading is, and its form.

CHAP. II.—When Master may sign Bills of Lading.

CHAP. III.—The effect of the Bill of Lading as evidence.

CHAP. IV.—When and how the Bill of Lading may be Transferred.

## THE LAW RELATING TO SHIPMASTERS AND SEAMEN.

ANALYSIS OF CONTENTS—*continued.*

CHAP. V.—The effect of the Transfer of the Bill of Lading upon the PROPERTY in the goods named in the Bill.

Sect. 1. The effect of the Transfer of the Bill of Lading upon the property in the goods.

Sect. 2. Instances in which it has been held that the property in the goods passed to the Consignee or Indorsee by the Transfer of the Bill of Lading.

Sect. 3. Instances in which it has been held that the property in the goods did not pass to the Consignee or Indorsee by the Transfer of the Bill of Lading.

CHAP. VI.—The effect of the Transfer of the Bill of Lading upon the CONTRACT contained in the Bill of Lading.

CHAP. VII.—The effect of the Bill of Lading upon the liabilities of Owners, Master, and Charterers.

CHAP. VIII.—The Master's duties as to delivery of the goods. (See PART IV., CARGO, CHAP. 8.)

CHAP. IX.—The meaning of the exceptions in the Bill of Lading.

## PART VI.

## Stoppage in Transitu.

ART. I.—What it is.

ART. II.—Who may exercise the right.

ART. III.—Under what circumstances the Consignor entitled to exercise the right.

Sect. 1. The Consignor must be wholly or partially unpaid.

Sect. 2. The Consignee must have become insolvent, or have so failed in circumstances as to be unable to perform his part of the contract.

Sect. 3. The Master or Carrier must be the agent to forward and not to receive and keep the goods.

ART. IV.—In what manner the right may be exercised.

ART. V.—How long the transit and the right to stoppage continue.

Sect. 1. The general rule.

Sect. 2. What is such a taking possession of the goods by the Consignee or his Agent to keep as to put an end to the right to stoppage.

a. Both Consignor and Consignee must have assented to the possession of the Consignee.

b. What acts amount to such a delivery to or taking possession by the Consignee.

1. Goods need not come to the corporal touch of the Consignee.

2. When touching, marking, or taking samples sufficient.

CHAP. V. (cont.)—

3. At what place.

4. Into what ship.

5. To what agent.

c. When delivery of part is delivery of the whole, so as to put an end to the right to stoppage.

CHAP. VI.—How the right to stoppage may be defeated.

Sect. 1. Generally.

Sect. 2. When the Transfer or Pledge of the Bill of Lading puts an end to the right to stoppage.

Sect. 3. When the Transfer of the Bill of Lading does not put an end to the right to stoppage.

CHAP. VII.—Master's duties as to delivery.

CHAP. VIII.—The effect of the exercise of this right on the Contract of Sale.

## PART VII.

## When the Master may make the Owners liable upon his personal Contracts.

CHAP. I.—When he may bind them in Contracts relating to the usual course of the Ship's employment.

CHAP. II.—When he may bind them for matters which are necessary for the prosecution of the voyage.

Sect. 1. Generally when he may do this.

Sect. 2. For necessary repairs and supplies.

Sect. 3. For money borrowed.

Sect. 4. The Master has no such authority if the Owner or his Agent can interfere.

CHAP. III.—What Owners are made liable by the Master's Contracts.

CHAP. IV.—When the Master may sell the Ship.

Sect. 1. Under what circumstances he may sell.

Sect. 2. When he may sell under the directions of a Foreign Court.

Sect. 3. What he must do before selling.

Sect. 4. Duty of purchaser before buying.

Sect. 5. Cases in which the sale has been upheld or set aside.

## PART VIII.

## Hypothecation.

CHAP. I.—The Form, Contents, and Nature of the Contract.

Sect. 1. What it is.

Sect. 2. Who may give it.

Sect. 3. To whom it may be given.

Sect. 4. Form.

Sect. 5. Contents.

Sect. 6. Construction.

Sect. 7. What rate of interest may be reserved.



## THE LAW RELATING TO SHIPMASTERS AND SEAMEN.

ANALYSIS OF CONTENTS—*continued.*

## CHAP. II.—Under what circumstances the Master may Hypothecate the Ship.

- Sect. 1. What necessity must exist to justify the Master in giving a Bond.
- Sect. 2. When Owners consent dispenses with the existence of such necessity.
- Sect. 3. For what purposes the Master may give a Bond.
- Sect. 4. In what Ports the Master may give a Bond.
- Sect. 5. What the Master must do before he may give a Bond.
- Sect. 6. The Master cannot Pledge the Ship and bind the Owners personally by the Bond.
- Sect. 7. What the Lender ought to ascertain before he can safely advance on the security of a Bond.

## CHAP. III.—The legal effect and operation of the Contract.

- Sect. 1. Generally.
- Sect. 2. When the Bond becomes payable.
- Sect. 3. What discharges the Bond.
- Sect. 4. What remedies the Bondholder has and against whom.
- Sect. 5. Over what claims a Bond has precedence.
- Sect. 6. By the law of what country the Contract is governed.

## CHAP. IV.—Under what circumstances the Master may Hypothecate the Freight.

## CHAP. V.—Under what circumstances the Master may Hypothecate the Cargo.

- Sect. 1. When he may Hypothecate the Cargo.
- Sect. 2. Cargo cannot be made liable on Bond given for necessities of the Ship till Ship and Freight are exhausted.
- Sect. 3. When he must communicate with Owners before giving a Bond.
- Sect. 4. Remedy of Owners of Cargo against the Owner of Ship.

## PART IX.

## The Crew.

## CHAP. I.—Interpretation of Terms.

## CHAP. II.—Seamen, how protected and regarded by the Courts.

## CHAP. III.—The duties of the Crew.

## CHAP. IV.—As to Apprentices.

## CHAP. V.—The engagement of Seamen.

## CHAP. VI.—Allotment of Wages.

## CHAP. VII.—Discharge and Payment of Wages.

- Sect. 1. When and how the Master may discharge a Seaman.
- Sect. 2. What public authority may discharge a Seaman.

## CHAP. VIII.—Remittance of Wages and Savings for Seamen.

## CHAP. IX.—Legal rights to Wages.

- Sect. 1. The provisions of the Statute.
- Sect. 2. When and how the Wage payable.
- Sect. 3. When the whole of the contracted for are due.
- Sect. 4. When part only of the Wage contracted for are due.
- Sect. 5. When no part of the Wage contracted for are due.
- Sect. 6. What will cause a forfeiture of Wages.
- Sect. 7. When Seamen may claim remuneration.
- Sect. 8. Insurance of Wages.
- Sect. 9. Effect of a change of Owners of Wages.

## CHAP. X.—Mode of recovering Wages and Seamen's Rights.

- Sect. 1. The Statutes.
- Sect. 2. Seamen may proceed against Owners, or Master, or Ship and Cargo.
- Sect. 3. Who are entitled to sue as Seamen.
- Sect. 4. The Lien of the Seaman on Wages.
- Sect. 5. Within what time Suits for Wages must be brought in the Court of Admiralty.

## CHAP. XI.—Relief to Seamen's Families out of Wages.

## CHAP. XII.—Wages and Effects of deceased Seamen.

## CHAP. XIII.—Leaving Seamen abroad.

## CHAP. XIV.—Volunteering into the Navy.

## CHAP. XV.—Provisions, Health, and Accommodation.

## CHAP. XVI.—Power of making Complaint, and of punishing Seamen from Imposition.

## CHAP. XVII.—Discipline, and forfeiture of Wages.

- Sect. 1. The Master's authority to maintain Order and Discipline.
- Sect. 2. When and how he may discharge.
- Sect. 3. What conduct on board constitutes forfeiture of Wages.
- Sect. 4. What acts amount to Desertion as to incur a forfeiture of Wages.
- Sect. 5. When a Master may forfeit a Seaman.
- Sect. 6. The Statutes.

## CHAP. XVIII.—Legal Procedure.



# THE LAW RELATING TO SHIPMASTERS AND SEAMEN.

## ANALYSIS OF CONTENTS—*continued.*

### PART X.

#### Pilots.

- CHAP. I.—Origin of Pilots.
- CHAP. II.—Definition of Terms used by and application of Sections of Merchant Shipping Act relating to Pilots.
- CHAP. III.—Pilotage authority.
  - Sect. 1. Powers of.
  - Sect. 2. Returns by.
- CHAP. IV.—Licensing of Masters and Mates.
- CHAP. V.—Pilot Boats and Pilot Licenses.
- CHAP. VI.—What Signals must be used and displayed when a Pilot is wanted.
- CHAP. VII.—When it is the Master's duty, irrespective of the Statute, to employ a Pilot, and the consequences of his not doing so.
- CHAP. VIII.—Compulsory Pilotage.
  - Sect. 1. In what cases the Employment of Pilots is compulsory.
  - Sect. 2. In what cases Ships are exempted from the Regulation respecting compulsory Pilotage.
  - Sect. 3. What will excuse a Master not employing a Pilot.
- CHAP. IX.—The Master's duties and authority while a Pilot is in charge of the Ship.
- CHAP. X.—The authority of the Pilot while the Ship is under his care.
- CHAP. XI.—The Limitation of the Liability of Owners and Master where Pilotage is compulsory.
  - Sect. 1. The Liability of Owners and Master for the Default of the Pilot irrespective of the Statute.
  - Sect. 2. The Statutable Limitations.
  - Sect. 3. To entitle Owners and Master to protection, the Default causing the injury must relate to some duty of the Pilot.
  - Sect. 4.—To entitle Owners and Master to protection, they must prove that the injury was due *solely* to the Pilot's Default.
  - Sect. 5. Respective Liabilities of Owners, Master, and Pilot, in cases of Ships in tow.
- CHAP. XII.—Rights, Privileges, and Remuneration of Pilots.
- CHAP. XIII.—Offences of Pilots.
- CHAP. XIV.—The Trinity House.
  - Sect. 1. General powers of.
  - Sect. 2. Sub-Commissioners and Pilots.
  - Sect. 3. Compulsory Pilotage.
  - Sect. 4. Rates of Pilotage.
  - Sect. 5. Pilot Fund.
  - Sect. 6. Appointment of Sub-Commissioners by Trinity Houses of Hull and Newcastle.
- CHAP. XV.—When Pilots may claim Salvage.
  - See Salvage, PART XIII., CHAP. 3, Sect. 11.*

### PART XI.

#### Passengers.

- CHAP. I.—The Master's authority over the Passengers.
- CHAP. II.—The Master's Duties to the Passengers irrespective of the Statutes.
- CHAP. III.—The Rights and Liabilities of Passengers under their contract irrespective of the Statutes.
- CHAP. IV.—The Statutable Provisions for the Protection of Passengers.
  - Sect. 1. Boats for sea-going Ships.
  - Sect. 2. Build and Equipment of Steam Ships.
  - Sect. 3. Survey of Passenger Steamers.
  - Sect. 4. Definition of Terms in and extent of "The Passengers Act, 1855," and the Machinery for executing the Act.
  - Sect. 5. Matters relating to a Passenger Ship to be attended to before sailing on Voyage from the United Kingdom.
  - Sect. 6. Passengers' Rights before, during, and after such Voyage.
  - Sect. 7. Miscellaneous Provisions.
  - Sect. 8. Voyages from the Colonies.
  - Sect. 9. Voyages to the United Kingdom.
  - Sect. 10. Schedules to "The Passengers' Act, 1855."
- CHAP. V.—Penalties on Drunken or Disorderly Passengers on a Passenger Steamer.

### PART XII.

#### Collisions.

- CHAP. I.—Liability of Masters and Owners for Damage by Collision.
- CHAP. II.—Rights of the Parties in a Court of Common Law when both Ships have been in Fault.
- CHAP. III.—If the Collision was the consequence of unavoidable Accident, neither party can recover either in a Court of Law or the Court of Admiralty.
- CHAP. IV.—What Remedy Owners of Injured Ship have in the Court of Admiralty.
  - Sect. 1. What Remedies the Owners of Injured Ship have in the Court.
  - Sect. 2. The Principles upon which the Court regulate the *right* to Compensation.
  - Sect. 3. The Principles upon which the Court proceeds in Assessing the amount of Compensation.
- CHAP. V.—The Law relating to Sailing Ships, Steam Ships, and Lights, prior to 25 and 26 Vict. c. 63.
- CHAP. VI.—The Statutable Provisions and Regulations now in Force for preventing Collisions at Sea with Diagrams.
  - Sect. 1. The Statutable Provisions.
  - Sect. 2. The Regulations and Diagrams.
- CHAP. VII.—The Cases decided upon the Regulations.
- CHAP. VIII.—Duties of Master in case of Collision.
  - Sect. 1. His duties to his own Ship.
  - Sect. 2. His duties to the Injured Ship.

# THE LAW RELATING TO SHIPMASTERS AND SEAMEN.

## ANALYSIS OF CONTENTS—*continued.*

### PART XIII.

#### Salvage.

CHAP. I.—What Salvage Services are, and when they should be rendered.

CHAP. II.—When Salvage Reward is Payable.

Sect. 1. When a Ship or Boat is Stranded or otherwise in Distress on the Shore of any Sea or Tidal Waters situate within the United Kingdom.

Sect. 2. For saving Life.

Sect. 3. In cases not falling within the two previous sections:—

1. The property valued must have been in Danger or Distress.
2. The Salvors must have rendered actual assistance which contributed towards saving the Property in danger.

Sect. 4. What Signals a Ship in Distress must use when Signalling for assistance.

Sect. 5. What kind of Services are treated as Salvage Services.

Sect. 6. The effect of acceptance or refusal of assistance on the right to Salvage reward.

Sect. 7. When a Seaman may agree to abandon his right to Salvage.

CHAP. III.—Who may claim as Salvors.

Sect. 1. General Rule.

Sect. 2. Crew of Salvaging Ship.

Sect. 3. Passengers on Salvaging Ship.

Sect. 4. Owners of Salvaging Ship.

Sect. 5. Crew of Ship Salvaged.

Sect. 6. Passengers on Ship Salvaged.

Sect. 7. Associated Ships.

Sect. 8. Officers and Crews of Her Majesty's Ships.

Sect. 9. Officers and Men of the Coastguard.

Sect. 10. Ship Agents.

Sect. 11. Pilots.

Sect. 12. Tugs.

Sect. 13. Magistrates.

CHAP. IV.—What claim Salvors have when there are several sets.

Sect. 1. Whilst the Master remains on Board.

Sect. 2. When the Ship is a derelict.

1. What constitutes a derelict.
2. The rights of several sets of Salvors.

Sect. 3. When the first set of Salvors abandon the enterprise.

CHAP. V.—What Amount will be awarded to Salvors.

Sect. 1. Where no Agreement was entered into between the Salvors and the Salvaged.

Sect. 2. Where an Agreement was entered into between the Salvors and the Salvaged.

Sect. 3. How the value of the Property Salvaged is estimated for the purpose of calculating the amount of Salvage.

CHAP. VI.—The Apportionment of the Salvage.

Sect. 1. In what proportions the Salvage apportioned among the Persons entitled.

1. Owners of Salvaging Ships.

2. The Master, Seamen, and prentices.

3. Persons assisting.

4. Where there are several sets of Salvors.

5. Officers and Seamen of the Royal Navy and Coastguard.

Sect. 2. By whom Salvage may be apportioned among those entitled.

Sect. 3. What Agreement for apportionment will be upheld.

Sect. 4. In what proportions Ship, Freight and Cargo contribute to the Salvage.

CHAP. VII.—What conduct forfeits the whole or of the Salvage.

Sect. 1. The General Rule.

Sect. 2. Misconduct.

Sect. 3. Negligence or Unskillfulness.

Sect. 4. Fraud.

Sect. 5. Embezzlement.

CHAP. VIII.—What remedies the Salvors have securing the payment of the Salvage.

Sect. 1. What the Salvors' remedies irrespective of Statute.

1. Their maritime lien.

2. Their right to retain possession of the Property saved.

Sect. 2. What the Salvors' remedies under the Statute.

Sect. 3. How far payment to one set discharges claim of others.

CHAP. IX.—Wrecks and Casualties.

### PART XIV.

#### The Master's Remedies.

CHAP. I.—The Master's remedies before "The Merchant Shipping Act, 1854."

CHAP. II.—The Statutable Provisions as to his remedies.

CHAP. III.—The Master's remedies since "The Merchant Shipping Act, 1854," and "The Admiralty Court Act, 1861."

Sect. 1. What remedies he now has.

Sect. 2. The Master's maritime lien for Wages and Disbursements.

Sect. 3. Over what claims the Master has precedence.

Sect. 4. What will cause a forfeiture or reduction of his Wages.

CHAP. IV.—When the Master may sue in his own name.

CHAP. V.—When the Master may sue the Owner.

### PART XV.

#### The Master's Liabilities.

CHAP. I.—Liability of Master on Contracts entered into for the Owners.

CHAP. II.—Liability of Masters for Wrongs.

CHAP. III.—Master's Liabilities under the Customs Acts.

In 8vo., Second Edition, price 21s., cloth,

# TREATISE ON THE LAW OF DAMAGES.

COMPRISING THEIR MEASURE,  
THE MODE IN WHICH THEY ARE ASSESSED AND REVIEWED,  
the Practice of Granting New Trials, and the Law of Set-off.

By JOHN D. MAYNE,  
Of the Inner Temple, Barrister-at-Law.

SECOND EDITION,

By LUMLEY SMITH, of the Inner Temple, Barrister-at-Law.

Few modern text-books have a higher authority than Mayne on Damages. An argument is seldom heard in the courts upon a question of the measure of damages without the work being referred to; and there are several points upon which there was, at the date of the first edition (1856), either an absence or a conflict of authority, and upon which the views advanced by the author have since been held to be law by the courts. . . . It is fortunate for the reputation of the work that so good an editor has been found for it as Mr. Lumley Smith. The alterations to the text of the former edition are distinguished by brackets. Mr. Lumley Smith's work has been well done, and the new cases are skilfully incorporated. . . . Probably there is no other work on the subject upon which the cases reported as well as are reported so frequently present the same difficulty of extracting from complicated statements of fact special in their character and not, likely to occur again, the legal principles involved in the decision, so as to be available for guidance in other cases. It is exactly this difficulty which makes the present one upon which a good text-book such as the present is peculiarly valuable."—*Solicitors' Journal*.

We are glad that this useful work fell into the hands of so capable an editor as Mr. Lumley Smith. It is always a great advantage gained when an editor has had practical experience of the subject upon which he deals, and it is a positive gain to the law when busy lawyers can find time to do well the work which is so apt to fall into the hands of those who have little learning and less practice. The law relating to damages is a branch of our jurisprudence peculiarly practical in its nature and highly important to suitors and the profession; it is, moreover, surrounded by difficulties which require a clear explanation before they become intelligible to the ordinary mind. . . .

The concluding chapter (c. 19) is very important, and we should like to make copious extracts from it. It deals with the 'powers of the court to judge in regard to damages.' We recommend it to the attention of our readers, as indeed we do the entire work, which is excellently executed, with an entire freedom from verbosity, and a good index."—*Law Times*.

"In the year 1856 Mr. John D. Mayne, a gentleman of the bar, now enjoying a very extensive practice in the Indian Empire, published a treatise on the Law of Damages. Mr. Mayne conferred a great boon on the profession by his labours, and for sixteen years his book has been regarded with high respect in Westminster Hall. In the ordinary course of things such a lapse of time, from the natural accretion of precedents, would have created a demand for a new edition, but in the particular department of law investigated by Mr. Mayne there has been an extraordinary development of principles, exhibited in numerous cases, upon which the judges have expended a large amount of time, industry, and learning. Consequently, the publication of a new edition is not premature. On the contrary, it was high time that the profession should be supplied with a treatise condensing and arranging the matter brought into existence by the contested cases of that period. It is perfectly intelligible that Mr. Mayne's absence from England and the toil of his professional career have prevented him from undertaking this duty himself. But the performance of it has fallen on a deputy, whose success in the discharge thereof might fairly have been anticipated, and who in the result has, we think, not disappointed the reasonable expectations formed concerning him.

"Mr. Lumley Smith has evidently been actuated by a modest desire not to despoil the original author of well-earned fame. He has, as far as possible, retained the primary form of the book, and has distinguished what Mr. Mayne wrote from what he himself has written, by enclosing all the later matter in brackets, adding a brief separate chapter on the assessment of damages in the Court of Chancery under Lord Cairns's Act, 21 & 22 Vict. c. 27. He has also cited many Scotch and Irish cases, and the leading American decisions of recent date.

"One word with regard to the book itself will not be out of place. It is well printed, in an excellent form, and of a convenient size—no small considerations in a text-book, which, from the nature of its contents, is useful rather for reference than for study. Good looks in a book set off its intrinsic merits, just as an imposing appearance adds to the dignity and influence of a judge."—*Law Journal*.



---

**THE NEW JUDICATURE ACTS.**


---

In preparation, in one volume, 8vo.,

**THE SUPREME COURT OF JUDICATURE ACT, 1873,**

The Supreme Court of Judicature Act Amendment Act, with the rules and orders thereon  
 Edited, with Copious Notes and a full Index, by WILLIAM DOWNES GRIFFITH, of the

Inner Temple, Barrister-at-Law,

Late Her Majesty's Attorney-General for the Colony of the Cape of Good Hope,  
 Author of "Griffith's Bankruptcy."

In the Press, in one volume, 8vo.

**AN ESSAY ON THE RIGHTS OF THE CROWN**

AND THE

PRIVILEGES OF THE SUBJECT ;

**In the Sea Shores of the Realm.**

By ROBERT GREAM HALL, of Lincoln's Inn, Barrister-at-Law. Second Edition. With  
 extensive Annotations, and references to the Decided Cases and later Authorities  
 in England, Scotland, Ireland, and the United States to the Present Time.  
 RICHARD LOVELAND LOVELAND, of the Inner Temple, Barrister-at-Law.

TOGETHER WITH AN APPENDIX, CONTAINING

I.—LORD CHIEF JUSTICE HALE's "De Jure Maris."

II.—The Case of DICKENS *v.* SHAW.

III.—MR. SERJEANT MEREWETHER's Speech in the Court of Chancery, Dec. 8, 1873  
 upon the Claim of the Commissioners of Woods and Forests to the Sea Shore  
 and the Soil and Bed of Tidal Harbours and Navigable Rivers; the Nature  
 and Extent of the Claim, and its effect upon such Property. (*Reprinted by  
 kind permission of H. A. MEREWETHER, Esq., Q.C.*)

IV.—Forms in Use by the Board of Trade relating to the Rights of the Crown in the  
 Sea Shore.

---

**CAPE OF GOOD HOPE.**


---

BUCHANAN (J.), Reports of Cases decided in the Supreme Court of the Cape of Good  
 Hope. Vols. I., II., & III. 1868-70. Royal 8vo. 63s.

————— Vol. IV., parts i. to iii. 1873. 15s.

MENZIES' (W.), Reports of Cases decided in the Supreme Court of the Cape of Good  
 Hope. Vol. I. and Vol. II., parts i. to iv. £5.

————— Vol. III., parts i. to iv. 42s.

In 12mo., price 10s. 6d.,

**SELECT THESES on the LAWS of HOLLAND and ZEELAND**

Being a Commentary of Hugo Grotius' Introduction to Dutch Jurisprudence, and intended  
 to supply certain defects therein, and to determine some of the more celebrated  
 Controversies on the Law of Holland. By DIONYSIUS GODEFRIDUS VAN  
 KEESEL, Advocate, and Professor of the Civil and Modern Laws in the University  
 of Leyden. Translated from the original Latin by C. A. LORENZ, of Lincoln's  
 Inn, Barrister-at-Law. Second Edition, with a Biographical Notice of the Author  
 by Professor J. DE WAL, of Leyden.



## MERCANTILE LAW.

In one volume, demy 8vo., 1866, price 10s. 6d., cloth,

PRINCIPLES OF THE LAW OF STOPPAGE IN TRANSITU,  
RETENTION, AND DELIVERY.

By JOHN HOUSTON, of the Middle Temple, Barrister-at-Law.

"We have no hesitation in saying, that we think Mr. Houston's book will be a very useful accession to the library of either the merchant or the lawyer."  
*Solicitors' Journal*.

"We have, indeed, met with few works which so

successfully surmount the difficulties in the way of this arduous undertaking as the one before us; for the language is well chosen, it is exhaustive of the law, and is systematised with great method."—*American Law Review*.

In 8vo., price 10s. 6d., cloth, lettered,

A REPORT OF THE CASE OF

## THE QUEEN v. GURNEY AND OTHERS.

of the Court of Queen's Bench before the Lord Chief Justice COCKBURN. With an Introduction, containing a History of the Case, and an Examination of the Cases at Law and Equity applicable to it; or Illustrating THE DOCTRINE OF COMMERCIAL FRAUD. By W. F. FINLASON, Barrister-at-Law.

"It will probably be a very long time before the prosecution of the Overend and Gurney directors is forgotten. It remains as an example, and a legal precedent of considerable value. It involved the immensely important question where innocent misrepresentation ends, and where fraudulent misrepresentation begins.

All who perused the report of this case in the columns of the *Times*, must have observed the remarkable fulness and accuracy with which that

duty was discharged, and nothing could be more natural than that the reporter should publish a separate report in book form. This has been done, and Mr. Finlason introduces the report by one hundred pages of dissertation on the general law. To this we shall proceed to refer, simply remarking before doing so, that the charge to the jury has been carefully revised by the Lord Chief Justice."  
—*Law Times*.

12mo., 1866, price 10s. 6d., cloth,

## A TREATISE ON THE GAME LAWS OF ENGLAND &amp; WALES:

Including Introduction, Statutes, Explanatory Notes, Cases, and Index. By JOHN LOCKE, M.P., Q.C., Recorder of Brighton. The Fifth Edition, in which are introduced the GAME LAWS of SCOTLAND and IRELAND. By GILMORE EVANS, of the Inner Temple, Barrister-at-Law.

In royal 8vo., 1867, price 10s. 6d., cloth,

## THE PRACTICE OF EQUITY BY WAY OF REVIVOR &amp; SUPPLEMENT.

With Forms of Orders and Appendix of Bills.

By LOFTUS LEIGH PEMBERTON, of the Chancery Registrar's Office.

Mr. Pemberton has, with great care, brought together and classified all these conflicting cases, and has, as far as may be, deduced principles which

will probably be applied to future cases."—*Solicitors' Journal*.

In 8vo., 1873, price 5s., cloth,

## THE LAW OF PRIORITY.

A Concise View of the Law relating to Priority of Incumbrances and of other Rights in Property. By W. G. ROBINSON, M.A., Barrister-at-Law.

Mr. Robinson's book may be recommended to the advanced student, and will furnish the practi-

tioner with a useful supplement to larger and more complete works."—*Solicitors' Journal*.

# ELECTION LAW.

In crown 8vo., 1874, price 14s., cloth lettered,

## A MANUAL OF THE PRACTICE OF PARLIAMENTARY ELECTIONS *Throughout Great Britain and Ireland.*

COMPRISING

THE DUTIES OF RETURNING OFFICERS AND THEIR DEPUTIES  
TOWN CLERKS, AGENTS, POLL-CLERKS, &c.,

AND THE

*Law of Election Expenses, Corrupt Practices, & Illegal Payments*

WITH

**AN APPENDIX OF STATUTES AND AN INDEX.**

By HENRY JEFFREYS BUSHBY, ESQ.,

One of the Metropolitan Police Magistrates, sometime Recorder of Colchester.

FOURTH EDITION,

*Adapted to and embodying the recent changes in the Law, including the Ballot Act, the Instructions to Returning Officers in England and Scotland issued by the Home Office, and the whole of the Statute Law relating to the subject.*

Edited by HENRY HARDCASTLE,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

"We have just received at a very opportune moment the new edition of this useful work. We need only say that those who have to do with elections will find 'Bushby's Manual' replete with information and trustworthy, and that Mr. Hardcastle has incorporated all the recent changes of the law."—*Law Journal*.

"As far as we can judge, Mr. Hardcastle, who

is known as one of the joint editors of O'Malley and Hardcastle's Election Reports, has done his work well. . . . For practical purposes, a handy manual, we can recommend the work to returning officers, agents, and candidates; a returning officers cannot do better than distribute this manual freely amongst their subordinates, they wish them to understand their work."—*Solicitors' Journal*.

A Companion Volume to the above, in crown 8vo., price 8s. cloth, lettered,

## THE LAW AND PRACTICE OF ELECTION PETITIONS,

With an Appendix containing the Parliamentary Elections Act, 1868, the General Rules for the Trial of Election Petitions in England, Scotland, and Ireland, Forms of Petitions, &c. By HENRY HARDCASTLE, of the Inner Temple, Barrister-at-Law.

"Mr. Hardcastle gives us an original treatise with foot notes, and he has evidently taken very considerable pains to make his work a reliable guide. Beginning with the effect of the Election Petitions Act, 1868, he takes his readers step by step through the new procedure. His mode of treating the subject of 'particulars' will be found

extremely useful, and he gives all the law in practice in a very small compass. In an Appendix is supplied the Act and the Rules. We thoroughly recommend Mr. Hardcastle's book as a concise manual on the law and practice of election petitions."—*Law Times*.

Now ready, Volume I., price 30s., and Volume II., price 24s.,

## REPORTS OF THE DECISIONS

OF THE

## JUDGES FOR THE TRIAL OF ELECTION PETITIONS IN ENGLAND AND IRELAND.

PURSUANT TO THE PARLIAMENTARY ELECTIONS ACT, 1868.

By EDWARD LOUGHLIN O'MALLEY AND HENRY HARDCASTLE,  
BARRISTERS-AT-LAW.

Stevens and Haynes' Series of Reprints of the Early Reporters.

## SOME RARE LAW BOOKS.

[From "THE ALBANY-LAW JOURNAL,"]

"Law books are not generally things of beauty. There is nothing particularly gratifying to the esthetic department of the human organism in the conventional typography of sheep-skin. Some of our publishers give considerable attention to the mechanical execution of their books, and deserve and receive a good degree of credit therefor. But, for all, their labours seldom please the eye. In most marked contrast to even the very best of our books, are a series of law books that have been recently issued by Messrs. STEVENS & HAYNES, of London. They are reprints of some of the scarcest of the Old English Reports, and in their mechanical execution would delight the heart of Aldus Manutius, Thuanus, or any other admirer of elegant editions. The black letter type of the originals is faithfully reproduced, the curious old-style spelling and interchange of letters have been closely followed, while the rich antique calf covers are, no doubt, superior to anything that served to encase the original Reports. These editions have been carefully prepared, and some of the volumes have been enriched with notes added in MS. to some copy of the original by its learned owner generations ago.

"This enterprise of Messrs. STEVENS & HAYNES is a matter of universal interest, and appeals to every lover of elegant books. The works which they have reproduced are those which were the scarcest, and for copies of which the most exorbitant prices were demanded. The following is a brief description of the matter of these volumes."

### BELLEWE'S CASES, T. RICHARD II.

In 8vo., price 3*l*. 3*s*., bound in calf antique,

## LES ANS DU ROY RICHARD LE SECOND.

Collect' ensembl' hors les abridgments de Statham, Fitzherbert, et Brooke. Per RICHARD BELLEWE, de Lincolns Inne. 1585. Reprinted from the Original Edition.

No public library in the world, where English law finds a place, should be without a copy of this edition of Bellewe."—*Canada Law Journal*.

We have here a *fac-simile* edition of Bellewe, and it is really the most beautiful and admirable reprint that has appeared at any time. It is a perfect gem of antique printing, and forms a most interesting monument of our early legal history. It belongs to the same class of works as the Year Book of Edward I. and other similar works which have been printed in our own time under the auspices of the Master of the Rolls; but is far superior to any of them, and is in this respect

highly creditable to the spirit and enterprise of private publishers. The work is an important link in our legal history; there are no year books of the reign of Richard II., and Bellewe supplied the only substitute by carefully extracting and collecting all the cases he could find, and he did it in the most convenient form—that of alphabetical arrangement in the order of subjects, so that the work is a digest as well as a book of law reports. It is in fact a collection of cases of the reign of Richard II., arranged according to their subjects in alphabetical order. It is, therefore, one of the most intelligible and interesting legal memorials of the Middle Ages."—*Law Times*.

## CUNNINGHAM'S REPORTS.

In 8vo., price 3*l*. 3*s*., calf antique,

CUNNINGHAM'S (T.) Reports in K. B., 7 to 10 Geo. II.; to which is prefixed a Proposal for rendering the Laws of England clear and certain, humbly offered to the Consideration of both Houses of Parliament. Third Edition, with numerous Corrections. By THOMAS TOWNSEND BUCKNILL, Barrister-at-Law.

The instructive chapter which precedes the case, entitled 'A proposal for rendering the Laws of England clear and certain,' gives the volume a degree of peculiar interest, independent of the value of any of the reported cases. That chapter begins with words which ought, for the information of every people, to be printed in letters of gold. They are as follows: 'Nothing conduces more to the

peace and prosperity of every nation than good laws and the due execution of them.' The history of the civil law is then rapidly traced. Next a history is given of English Reporters, beginning with the reporters of the Year Books from 1 Edw. III. to 12 Hen. VIII.—being near 200 years—and afterwards to the time of the author."—*Canada Law Journal*.



**Stevens and Haynes' Series of Reprints of the Early Reporters.****CHOYCE CASES IN CHANCERY.**In 8vo., price 2*l.* 2*s.*, calf antique,**THE PRACTICE OF THE HIGH COURT OF CHANCERY.**

With the Nature of the several Offices belonging to that Court. And the Reports of many Cases wherein Releif hath been there had, and where denied.

"This volume, in paper, type, and binding (like 'Bellewe's Cases') is a facsimile of the antique edition. All who buy the one should buy the other."—*Canada Law Journal*.

In 8vo., price 3*l.* 3*s.*, calf antique,**SIR G. COOKE'S COMMON PLEAS REPORTS**

In the Reigns of Queen Anne, and Kings George I. and II.

The Third Edition, with Additional Cases and References contained in the Note taken from L. C. J. EYRE'S MSS. by Mr. Justice NARES, edited by THOMAS TOWNSEND BUCKNILL, of the Inner Temple, Barrister-at-Law.

"Law books never can die or remain long dead so long as Stevens and Haynes are willing to continue them or revive them when dead. It is certainly surprising to see with what facial accuracy

an old volume of Reports may be produced by these modern publishers, whose good taste is only equalled by their enterprise."—*Canada Law Journal*.

**BROOKE'S NEW CASES WITH MARCH'S TRANSLATION.**In 8vo., 1873, price 4*l.* 4*s.*, calf antique,

BROOKE'S (Sir Robert) New Cases in the time of Henry VIII., Edward VI., and Queen Mary, collected out of Brooke's Abridgment, and arranged under year with a table, together with MARCH'S (John) *Translation of BROOKE'S New Cases* in the time of Henry VIII., Edward VI., and Queen Mary, collected out of BROOKE'S Abridgment, and reduced alphabetically under their proper heads and titles, with a table of the principal matters. In one handsome volume. 8vo. 187

"Both the original and the translation having long been very scarce, and the mispaging and other errors in March's translation making a new and corrected edition peculiarly desirable, Messrs.

Stevens and Haynes have reprinted the two books in one volume, uniform with the preceding volume of the series of Early Reports."—*Canada Law Journal*.

**KELYNGE'S (W.) REPORTS.**In 8vo., 1873, price 4*l.* 4*s.*, calf antique,

KELYNGE'S (William) Reports of Cases in Chancery, the King's Bench, &c., from the 3rd to the 9th year of His late Majesty King George II., during which time Lord King was Chancellor, and the Lords Raymond and Hardwicke were Chancellors of England. To which are added, seventy New Cases not in the First Edition. Third Edition. In one handsome volume. 8vo. 1873.

**KELYN'S (SIR JOHN) CROWN CASES.**In 8vo., 1873, price 4*l.* 4*s.*, calf antique,

KELYN'S (Sir J.) Reports of Divers Cases in Pleas of the Crown in the Reign of King Charles II., with Directions to Justices of the Peace, and others; to which are added, Three Modern Cases, viz., Armstrong and Lisle, the King and Plumm the Queen and Mawgridge. Third Edition, containing several additional Cases never before printed, together with a TREATISE UPON THE LAW AND PROCEEDINGS IN CASES OF HIGH TREASON, first published in 1793. The whole carefully revised and edited by RICHARD LOVELAND LOVELAND, of the Inner Temple, Barrister-at-Law.

"We look upon this volume as one of the most important and valuable of the unique reprints of Messrs. Stevens and Haynes. Little do we know of the mines of legal wealth that lie buried in the old law books. But a careful examination, either of the reports or of the treatise embodied in the volume now before us, will give the reader some idea of the

good service rendered by Messrs. Stevens & Haynes to the profession. . . Should occasion arise, Crown prosecutor as well as counsel for the prisoner will find in this volume a complete *vade mecum* of the law of high treason and proceedings in relation thereto."—*Canada Law Journal*.

Other Volumes are in Progress.



In 8vo., 1867, price 21s., cloth,

## A TREATISE ON THE COMPANIES ACT, 1862.

With Special Reference to Winding-up, for the purposes of Reconstruction or Amalgamation; with Orders, Forms, and Precedents. Together with a Supplement, containing the Companies Act, 1867, with Notes, and a Digest of Additional Cases. By G. LATHOM BROWNE, of the Middle Temple, Barrister-at-Law.

The Supplement may be had separately, price 2s. 6d., cloth.

Perspicuous statement and felicity of arrangement characterise the work throughout. . . . From experience as a liquidator and a director, our author has been able to offer a work of a very practical nature, and at the same time of value to the profession."—*Law Magazine*.

"This work is exceedingly well done; and is just such a one as solicitors, directors, officers, shareholders, and creditors of joint-stock companies ought to possess for the guidance and government of their conduct in regard to their interests, duties, or obligations in the company, with which they may be connected."—*Money Market Review*.

## BIBLIOTHECA LEGUM.

In 12mo. (338 pp.), price 2s., cloth lettered,

## A CATALOGUE OF LAW BOOKS,

Including all the Reports in the various Courts of England, Scotland, and Ireland; with a Supplement to January, 1874. By HENRY G. STEVENS and ROBERT W. HAYNES, Law Publishers and Booksellers; Exporters of Law and Miscellaneous Literature; Foreign and Colonial Literary Agents, &c. &c.

In royal 8vo., 1872, price 28s., cloth lettered,

## AN INDEX TO

## TENTHOUSAND PRECEDENTS IN CONVEYANCING, AND TO COMMON AND COMMERCIAL FORMS.

Arranged in Alphabetical order with Subdivisions of an Analytical Nature; together with an Appendix containing an Abstract of the Stamp Act, 1870, with a Schedule of Duties; the Regulations relative to, and the Stamp Duties payable on, Probates of Wills, Letters of Administration, Legacies, and Successions. By WALTER ARTHUR COPINGER, of the Middle Temple, Barrister-at-Law, Author of "The Law of Copyright in Works of Literature and Art."

We cannot close this review of Mr. Copinger's publication better than with the apt quotation with which he inaugurates it: 'Knowledge is of two kinds; we know a subject ourselves, or we know where we can find information upon it.'

Mr. Copinger has not only designed an Index which cannot fail to be of practical use, but has

successfully elaborated the work designed by combining a perspicuous order of arrangement with a most exhaustive table of contents, and most copious references to precedents. The Index is arranged in alphabetical order, with subdivisions of an analytical nature, the latter being made throughout subservient to the former."—*Law Journal*.

In 8vo., 1871, price 5s., cloth,

## THE LAW OF NEGLIGENCE,

Illustrated by the Recent Decisions of the Courts of the United Kingdom and America. By ROBERT CAMPBELL, Advocate of the Scotch Bar, and of Lincoln's Inn, Barrister-at-Law.

In this Essay, the Author reviews old principles in the light of recent decisions; combining the point of view of the practitioner—noting the latest phase of judicial opinion; with the attempt to digest and harmonize the law, so that (if possible) new decisions may seem to illustrate old and familiar principles, or that the extent and direction of the change introduced by each decision may be correctly estimated.

would also refer to some ingenious remarks as the misapplication of the term 'gross negligence,' which are to be found in a very good book—Campbell's Law of Negligence."—*Mr. Justice Wills in the case of "Oppenheim v. White Lion Insurance Co."*

We presume from this being styled the first of a series of practical Law Tracts, that Mr. Campbell

is about to devote his attention to other subjects, which, from the success of his first attempt, we shall expect to see him elucidate considerably. If, however, he should ever find time to expand this tract on the Law of Negligence into a complete treatise, we shall expect to find it one of the most satisfactory text-books on English law."—*Solicitors' Journal*.

# AMERICAN LAW WORKS

IMPORTED BY

**STEVENS AND HAYNES.**

*\*\* Should the Profession have any difficulty in procuring any of the following Books through their usual Bookseller, application to STEVENS & HAYNES will meet with prompt attention.*

## ABBOTT'S NEW YORK DIGEST.

Entirely recast, revised, corrected, and consolidated. A Digest of New York Statute and Reports from the Earliest Period to the Year 1873. Comprising the Adjudications of all the Courts of the State, together with the Statutes of General Application. By BENJAMIN VAUGHAN ABBOTT and AUSTIN ABBOTT. In royal 8vo. volumes, price 9*l*. 15*s*., bound.

## ABBOTT'S (B. V.) TREATISE UPON THE U.S. COURTS AND THEIR PRACTICE:

Explaining the Enactments by which they are controlled; their Organisation and Powers their peculiar Jurisdiction; and the modes of Pleading and Procedure in them. Second Edition. Two vols., royal 8vo. 1871. 3*l*.

Now ready, Volumes I. to XII.,

## THE AMERICAN REPORTS.

CONTAINING ALL CASES OF GENERAL VALUE,

DECIDED BY THE COURT OF LAST RESORT IN EVERY STATE IN THE UNION.

The Reports of the Courts of Last Resort of the several States contain cases of great general importance, and which are always considered as high authority by the Courts of the other States, but they are buried beneath a mass of practice and local cases of no value outside of the States in which they are decided.

In "The American Reports" the plan is to give all cases having a general value hereafter decided by the Court of Last Resort in every State, unencumbered by Practice Cases and those of local importance only.

## AMERICAN CONSTITUTIONS:

Comprising the Constitution of each State in the Union, and of the United States, with the Declaration of Independence and Articles of Confederation; each accompanied by a Historical Introduction and Notes, together with a Classified Analysis of the Constitutions, according to their subjects, showing, by comparative arrangement, every Constitutional Provision now in force in the several States; with Reference to Judicial Decisions, and an Analytical Index. Illustrated by carefully engraved fac-similes of the Great Seals of the United States, and of each State and Territory. By FRANKLIN B. HOUGH. In two vols., price 70*s*., bound. 1872.

## THE AMERICAN LAW REVIEW.

A Quarterly Journal of American Jurisprudence, &c. Price 6*s*. each number.

The principal features of this Review are treatises upon practical or theoretic points of law, reports of leading cases, regular digests of the current series of English Reports and of the principal American cases from the courts of all the States, brief critical notices of new law-books, and in each number a "Summary of Events," where notes of decisions, legal intelligence, and professional gossip are grouped under local headings.

## TELEGRAPH CASES.

Allen's Reports of Telegraph Cases decided in the Courts of America, Great Britain and Ireland, 1851-72. Royal 8vo. 1873. 35*s*. law falf.

## AMERICAN LAW WORKS—*continued.*

In 8vo., 1873, price 15s., bound,

### MANUAL OF THE LAWS AND COURTS OF THE UNITED STATES,

AND OF THE SEVERAL STATES AND TERRITORIES.

By HORACE ANDREWS, of the New York Bar.

This book is a complete summary in convenient form of the Jurisdiction of all the Courts, and of the Laws of the United States and all the other States and Territories, for the use of Lawyers, Notaries, Commissioners, Collecting Agents and business men.

*From THE TIMES.*

"Among recent publications has been a 'Manual of the Laws and Courts of the United States,' and of the several States and Territories, with a Dictionary of reliable practising lawyers, edited by Horace Andrews, A.M., of the New York Bar. The business relations of the two countries, extending with such rapidity as to render a work of the kind indispensable for use on this side, the task seems to have been carefully performed by Mr. Andrews. It will not only serve to prevent contracts being entered into in ignorance of peculiar local statutes, but in many questions that may arise will save the delay and expense that

would be caused by the necessity for correspondence; while to intending settlers also it will be a guide with regard to exemption and homestead laws, rates of interest, rights of married women, taxation, and other points bearing on their future course."

"The work, we are told in the Preface, is designed for lawyers and business men. The object appears to be to give a plain statement of the law, practice, and procedure of the courts, without the citation of authority, so as to be a guide to nonprofessional persons. It must prove a most useful epitome, for it contains a great amount of varied information."—*Law Times.*

### FIRE INSURANCE CASES.

Being a Collection of all the Reported Cases on Fire Insurance in England, Ireland, Scotland, and America, from the earliest period to the present time, Chronologically arranged. With Notes and References. By EDMUND H. BENNETT. Vol. I., covering the period from 1729 to 1839; Vol. II., covering the period from 1840 to 1849. Two vols., royal 8vo. 1872-3. Price 3*l.* 15s., law calf.

It is proposed to issue a collection of *all the cases* of Fire Insurance from the earliest period to the present time, chronologically arranged, with notes and references, by Hon. EDMUND H. BENNETT, of the Boston Bar. The Series will embrace all the reported cases in England, Ireland, Scotland, and America, including Canada and the British Provinces. The opinions of the Court will always be given in full, but the arguments of Counsel and the reporter's statement will be sometimes condensed. New head-notes will also be frequently

introduced, and foot-notes and references to other Cases added. The Court by which the Case was determined, and the volume and page where originally reported, will distinctly appear. A Table of Cases, both of those reported and of those only cited, with a full Index, will be found in each volume.

The volumes to complete the Work, and bringing the Cases to the present time, will be published at an early period.

Royal 8vo., 1873, price 42s., law calf,

### BIGELOW'S INDEX OF OVERRULED CASES.

The attempt has been made in this Volume to collect all the reported cases from the earliest period to the present time which have been revised, overruled, denied, doubted, modified, with such of the cases explained or distinguished as were deemed important; and, for the accomplishment of this purpose, all the Reports of the English, Irish, and American Courts have been examined, and for the most part page by page. The number of cases amounts to twenty thousand.

"A book which every lawyer will find it useful to have at his elbow."—*SOLICITORS' JOURNAL.*

Royal 8vo., 1872, price 31s. 6*d.*,

### A TREATISE ON THE LAW OF ESTOPPEL, AND ITS APPLICATION IN PRACTICE.

By MELVILLE M. BIGELOW.



## AMERICAN LAW WORKS—*continued.*

### LIFE AND ACCIDENT INSURANCE REPORTS.

Vol. I.—Containing Reports of all the published Life and Accident Insurance Cases determined in the American Courts prior to January, 1871. With Notes on English Cases. Vol. II.—Containing all the Cases adjudicated on in the American and English Courts since the publication of Vol. I.; together with the principal leading English Life and Accident Insurance Cases. Vol. III., embraces the Cases decided since January 1872, and also all the Scotch and Canadian cases of general interest, and such of the English and Irish cases as were not published in the second volume. The Scotch cases are as valuable as they are inaccessible to the Profession generally. By MELVILLE M. BIGELOW, of the Boston Bar. Three vols., royal 8vo. 1871-4. Price 5*l.* 10*s.*, law calf.

The subject of Life and Accident Insurance has within a few years sprung into such absorbing interest in the Courts, that it has been thought that a collection of the Cases upon this branch of the law would prove acceptable.

These Cases decide interesting and important questions concerning Suicide, Insurable Interests, Restrictions upon Residence and Travel, Recovery of Premium after Forfeiture, Death in Violation of Law, &c.

### BISHOP'S COMMENTARIES ON THE CRIMINAL LAW.

Two vols., royal 8vo. Fifth Edition. 1872. 3*l.* 10*s.*, cloth.

Fifth Edition, 1873, two volumes, royal 8vo., 3*l.* 10*s.*, cloth,

### COMMENTARIES ON THE LAW OF MARRIAGE AND DIVORCE.

With the Evidence, Practice, Pleading, and Forms; also of Separations without Divorce and of the Evidence of Marriage in all issues. By JOEL PRENTISS BISHOP.

This work has been thoroughly revised. The new matter added to this edition is in amount equal to nearly one-fourth of a volume.

### BISPHAM'S PRINCIPLES OF EQUITY.

A Treatise on the System of Justice Administered in the Courts of Chancery. By GEORGE TUCKER BISPHAM, of the Philadelphia Bar. 8vo. 3*l.* 6*d.*

### BLISS (G.). THE LAW OF LIFE INSURANCE.

With a Chapter on Accident Insurance.

Second Edition, royal 8vo. 1874. 35*s.*, cloth.

In one volume, royal 8vo., 1873, price 35*s.*, cloth,

### BROWNE ON THE LAW OF TRADE MARKS

AND ANALOGOUS SUBJECTS

(Firm Names, Business Signs, Goodwill, Labels, &c.).

### THE CIVIL CODE OF LOWER CANADA.

Together with a Synopsis of Changes in the Law, References to the Reports of the Commissioners, &c., and a complete Index. By THOMAS McCORD, Advocate. 12mo. New Edition. 1873. 7*s.* 6*d.* bound.

Royal 8vo., Fourth Edition, 1873, price 40*s.*, cloth.

### CURTIS' TREATISE ON THE LAW OF PATENTS

For Useful Inventions in the United States of America, and the Remedies for their Infringement.



**AMERICAN LAW WORKS—continued.****FISHER (SAMUEL S.). REPORTS OF CASES ARISING UPON LETTERS PATENT FOR INVENTIONS,**

Determined in the Circuit Courts of the United States. 1848-71. In 4 vols., royal 8vo. 1870-72. 21l.

**GREEN'S CRIMINAL LAW REPORTS.**

Being Reports of Cases determined in the Federal and State Courts of the United States, and in the Courts of England, Ireland, Canada, &c. With Notes by N. ST. JOHN GREEN. Vol. I., royal 8vo., price 40s., law calf.

**LEADING CASES ON MERCANTILE LAW.**

Fifth Edition. Enlarged and Improved. Being Select Decisions of American Courts, with especial Reference to Mercantile Law, with Notes. The whole Work has been thoroughly revised, and largely increased by the introduction of several entirely new heads of practical interest, by Hon. J. I. C. HARE and JNO. WM. WALLACE, Esq. In 2 vols., royal 8vo. Price 3l. 15s., law calf.

**HADLEY'S INTRODUCTION TO ROMAN LAW,**

In Twelve Academical Lectures. 12mo. 1874. 7s. 6d.

**MUNICIPAL LAW OF ONTARIO, CANADA.**

In one vol., 8vo., price 35s., calf.

Being Municipal Manual, containing the Municipal and Assessment Acts, and Rules of Court for the Trial of Contested Municipal Elections, with Notes of all decided Cases, some additional Statutes, and a full Index. By ROBERT A. HARRISON, D.C.L., one of Her Majesty's Counsel. Third Edition. 8vo. Toronto, 1874.

In royal 8vo. 1874. Price 35s., cloth.

**TREATISE ON EXTRAORDINARY LEGAL REMEDIES.**

Embracing MANDAMUS, QUO WARRANTO and PROHIBITION. By JAMES L. HIGH, of the Chicago Bar.

"Mr. High is quite right when he says that no single treatise covers the ground which he now occupies, 'no previous writer having ever attempted treatise upon either of the subjects here embraced, which should be founded upon and include the result of all the English and American decisions.' In this score the book is welcome, and we think at American jurisprudence has attained to such excellence, and has been built up by men of vast learning, whose successors have proved most worthy, that it is impossible to write a text book

on a branch of law common to both countries without citing the legal decisions in both countries. Another merit in Mr. High's work is that, 'following the inductive method, he has endeavoured to group and generalise the results of his investigations, so as to ascertain the governing principles underlying all the decisions, and to state these in the text with as much brevity as seemed consistent with clearness.' As the work of an American, the treatise under notice is one of the best which we have met with."—*Law Times*.

**HILLIARD (F.) THE LAW OF NEW TRIALS, AND OTHER REHEARINGS;**

Including Writs of Error, Appeals, &c. Second Edition. Royal 8vo. 1872. 35s.

**HILLIARD ON THE LAW OF SALES OF PERSONAL PROPERTY.**

Third Edition. Royal 8vo. 1869. 31s. 6d., cloth.

**IDAHO REPORTS.**

Cases Argued and Adjudged in the Supreme Court of the Territory of Idaho, January 1866 to August 1867. One vol., 8vo. 1867. 2l. 10s.

## AMERICAN LAW WORKS—*continued.*

KENT'S COMMENTARIES ON AMERICAN LAW.

### COMMENTARIES ON AMERICAN LAW.

By Hon. JAMES KENT. Edited and Revised by O. W. HOLMES, Junr. 12th Edition.  
4 vols. royal 8vo. 1873. 5*l.* cloth.

In the present edition of this work an attempt has been made to bring it down through the quarter of a century which has elapsed since the author's death.

The great weight attaching to any opinion of Chancellor Kent has been deemed a sufficient reason for not attempting any alteration in his text or notes. To insure accuracy, this edition has been printed from the eleventh, and then carefully read with the sixth, which contained the author's last corrections. The original text has been scrupulously restored, except that, whenever a difference between the proofs and the sixth edition has occurred in a citation, it has been corrected in the proper abbreviated form. In this way a large proportion of the author's citations have been verified; and it is believed that the present revision, together with the care which former editors have bestowed, has insured their accuracy.

Royal 8vo., Vol. I., price 32*s.*, cloth,

### A SELECTION OF CASES ON THE LAW OF CONTRACTS.

With References and Citations. By C. C. LANGDELL, Dane Professor of Law in Harvard University.

"The design of this work is both novel and good."—*Solicitors' Journal*.

"Mr. Langdell has rummaged the vast libraries

of English, Scotch, Irish, American, and even of French Law, in order that he might present their jewels to his pupils."—*Law Journal*.

Royal 8vo., Vol. I., price 35*s.*, cloth,

### LEADING CASES ON SALES.

A Selection of Cases on the Law of Sales of Personal Property. With References and Citations. By C. C. LANGDELL, Dane Professor of Law in Harvard University.

"We have before noticed Professor Langdell's Selection of Cases on the Law of Contracts. The present work is on the same plan.

"For those students who desire to know what the fundamental principles of law are, and the method in which they have been worked out and applied, we know no work to which we would sooner recommend them.

"We have said that these books were mainly

intended to be useful to students; but if there are any practising lawyers who still have the time and taste to 'read law,' we can promise them that they will find no legal study more delightful than that of tracing the history of opinion through the pages of these books. . . . To understand fully how good these books are, the reader must be a pretty good lawyer himself."—*American Law Review*.

### MAY'S LAW OF INSURANCE.

In royal 8vo. 1873. 38*s.*, cloth.

The Law of Insurance as applied to Fire, Life, Accident, Guarantee, and other non-Maritime risks. By JOHN WILDER MAY.

### MORSE ON ARBITRATION AND AWARD.

The Law of Arbitration and Award. By JOHN T. MORSE, Junr. 8vo. 35*s.*, cloth.

### NEBRASKA REPORTS.

Reports of Cases in the Supreme Court of Nebraska. By JAMES M. WOOLWORTH, Counsellor-at-Law. 3 vols., 8vo. 1871-73. 7*l.* 10*s.*

### NEVADA REPORTS.

Reports of Cases Determined in the Supreme Court of the State of Nevada. Eight vols., 8vo. 1865 to 1873. 24*l.*

\* \* \* These Reports contain numerous Decisions upon Mines and Mining Claims, Mining Rights, &c.

**AMERICAN LAW WORKS**—*continued.***NEW YORK SUPREME COURT REPORTS.**

Reports of Cases Argued and Determined in the late Supreme Court of the State of New York, 1842, 1843, and 1844. By T. M. LALOR. Being a continuation of Hill and Denio's N. Y. Reports. One vol., 8vo. 1857. 30s.

**THOMPSON AND COOKE'S NEW YORK SUPREME COURT REPORTS.**

*COMMENCING JUNE, 1873.*

Vols. I., II., and III. now Ready. Price 35s. each, law calf.

**NEW YORK.**

Reports of Cases Argued and Determined in the Superior Court of the City of New York. By J. MCSWEENEY. 1869-70. Two vols., 8vo. 3l. 10s.

**THE CIVIL CODE OF THE STATE OF NEW YORK.**

Reported complete by the Commissioner of the Code. 8vo. 1865. 18s.

**OREGON REPORTS.**

Reports of Cases Argued and Determined in the Supreme Court of the Territory of Oregon, and of the State of Oregon, 1853 to 1870; and Cases in the Circuit Courts of Oregon. 1867 to 1872. Three vols., 8vo. 9l.

Sixth Edition, 1873, thoroughly revised, three volumes, royal 8vo., 5l., cloth,

**PARSONS ON CONTRACTS.**

"In this edition the whole work has been recast and thoroughly revised; new chapters on the law of Wills, Copyright, Trade-marks, and Telegrams, inserted; additions made to almost every section; and more than thirteen hundred recent cases quoted from or cited. Every effort has been made to render the work worthy the acceptance it finds with the profession."—*Author's Preface to the Sixth Edition.*

**PARSONS' (T.) LAW OF SHIPPING AND THE PRACTICE IN ADMIRALTY.**

Two vols., royal 8vo. 1869. 3l. 3s. cloth.

**PARSONS' (T.) LAW OF MARINE INSURANCE AND GENERAL AVERAGE.**

Two vols., royal 8vo. 1868. 3l. cloth.

**PASCHAL'S DIGEST OF THE LAWS OF TEXAS,**

Carefully Annotated. One vol., large 8vo. 1866.

**PHILLIPS ON INSURANCE.**

Treatise on the Law of Insurance (Marine, Life and Fire). By WILLARD PHILLIPS. Fifth Edition. In two volumes, 8vo. 1867. Price 3l. 3s., cloth.

In royal 8vo., 1872, price 25s., cloth,

**THE LAW OF APPELLATE PROCEEDINGS,**

In relation to Review, Error, Appeal, and other reliefs upon final judgments.

By T. M. POWELL.



**AMERICAN LAW WORKS**—*continued.*

Fourth Edition, royal 8vo., 1873, 36s., cloth lettered,

**A PRACTICAL TREATISE ON THE LAW OF COVENANTS FOR TITLE.**

By WILLIAM HENRY RAWLE. Fourth Edition, revised and enlarged.

In the preparation of this edition every line has been carefully considered, and every authority consulted. Much of it has been written over,—in particular, the introduction, the chapter on “the use of covenants,” on the covenant against encumbrances, on covenants running with the land, and as to the operation by way of estoppel or rebutter. The subject of the measure of damages has been considered separately, and a new chapter has been added,—“The jurisdiction of equity as to covenants for title.” is believed that the treatise now correctly represents the present state of the law in England and America.

In two volumes, royal 8vo., 1873, price 70s., cloth,

**THE LAW OF RAILWAYS.**

Embracing Corporations, Eminent Domains, Contracts, Common Carriers of Goods and Passengers, Telegraph Companies, Equity Jurisdiction, Taxation, Constitution Law, Investments, etc., etc. By ISAAC F. REDFIELD, LL.D., Chief Justice Vermont. Fifth Edition, carefully revised and enlarged.

**SCHOULER (J.) ON THE LAW OF DOMESTIC RELATIONS;**

Embracing Husband and Wife, Parent and Child, Guardian and Ward, Infancy, a Master and Servant. Second Edition. One vol., royal 8vo. 1874. 38s. cloth.

**SCHOULER (J.). A TREATISE ON THE LAW OF PERSONAL PROPERTY.**

8vo. 1873. 35s. cloth.

**SHEARMAN AND REDFIELD ON THE LAW OF NEGLIGENCE.**

Third Edition, royal 8vo. 1874. 35s. cloth.

**JUDGE STORY'S WORKS.**

In two volumes, royal 8vo., 1873, price 75s., cloth,

**COMMENTARIES ON EQUITY JURISPRUDENCE.**

As administered in England and America. By JOSEPH STORY, LL.D. Eleventh Edition, carefully revised, with Notes and Additions, by F. J. BALCH.

**COMMENTARIES ON AGENCY.**

Eighth Edition. By N. ST. JOHN GREEN. 35s. cloth.

**COMMENTARIES ON BAILMENTS.**

Eighth Edition. By E. H. BENNETT, Esq. 31s. 6d. cloth.

**COMMENTARIES ON PARTNERSHIP.**

Sixth Edition. By JOHN C. GRAY, Junr. 31s. 6d. cloth.

**COMMENTARIES ON CONFLICT OF LAWS.**

Seventh Edition. By EDMUND H. BENNETT. 35s. cloth.



**AMERICAN LAW WORKS**—*continued.***COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES.**

In two volumes, royal 8vo., 1873, price 63s., cloth,  
 With a Preliminary Review of the Constitutional History of the Colonies and States before the adoption of the Constitution. By JOSEPH STORY, LL.D. In two volumes, royal 8vo. Fourth Edition, with Notes and Additions, by THOMAS M. COOLEY.

**STORY (W. W.) ON THE LAW OF CONTRACTS.**

Fifth Edition. Revised and enlarged by MELVILLE M. BIGELOW. Two vols., royal 8vo., price 75s. cloth.

**THE SOUTHERN LAW REVIEW**

Is Quarterly Magazine, devoted to the interests of the Legal Profession, and contains, in each number, two hundred pages of reading matter.

The *Albany Law Journal* says: "The 'Southern Law Review' is winning a deservedly good reputation by the excellence of its contents, and the ability with which it is conducted."

**A TREATISE ON THE VALIDITY OF VERBAL AGREEMENTS.**

Affected by the Legislative Enactments in England and the United States, commonly called the Statute of Frauds; including also the effect of Partial and Complete Performance and the sufficiency of the Writing in Cases where Verbal Agreements are not valid; together with other kindred matters; to which are prefixed transcripts of the various Statutes on the subject now in force in both Countries.

By MONTGOMERY H. THROOP. Vol. I., royal 8vo. 1870. Price 35s. cloth.

**TOWNSHEND'S TREATISE ON THE WRONGS CALLED SLANDER AND LIBEL.**

On the Remedies for those Wrongs. By JOHN TOWNSHEND, of the New York Bar, Second Edition. 1872. 38s. cloth.

**UNITED STATES CIRCUIT COURT REPORTS.**

Reports of Cases at Law and Equity, and in the Admiralty, Determined in the Circuit Court of the U. S. for the District of Maryland. By R. B. TANEY, Chief Justice of the Supreme Court of the U. S. April T. 1836 to April T. 1861. One vol., 8vo. 35s.

**UNITED STATES DISTRICT COURT REPORTS.**

Reports of Cases Argued and Determined in the District Courts of the U. S. within the Second Circuit. By ROBERT D. BENEDICT. 1865 to 1871. Four vols. 8vo. 9s.

\* Numerous and valuable Decisions concerning Collisions at Sea are contained in the volumes. The Reports in all the U. S. District Courts contain Decisions in Admiralty.

**WASHINGTON TERRITORY REPORTS.**

Opinions of the Supreme Court of the Territory of Washington, 1854 to 1864. One vol., 8vo. 2s. 10s.

## AMERICAN LAW WORKS—*continued.*

### WHARTON'S CRIMINAL LAW.

Seventh and Revised Edition. Three vols., royal 8vo. 1874.

Vol. I. PRINCIPLES, PLEADING, and EVIDENCE. Vol. II. CRIMES. Vol. III. PRACTICE.  
Price £5, cloth.

A TREATISE ON THE CRIMINAL LAW OF THE UNITED STATES. By FRANCIS WHARTON, LL.D., Author of "Conflict of Laws," "Precedents of Indictments and Pleas," "Medical Jurisprudence," "Law of Homicides," &c.

The third volume of this edition is substantially new, and comprehends an independent treatise on Criminal Practice. The chapters on Crimes, which in prior editions were spread over the second and third volumes, are now consolidated in the second. The whole work has been thoroughly revised and re-written, and upwards of six hundred pages of additional matter incorporated in the text. To enable this extension to be more readily mastered, the topics have been re-arranged, devoting the first volume to Principles, Pleading, and Evidence; the second to Crimes; and the third to Practice.

Recent investigations having shown that the chief maxims and definitions of the English Criminal Law have been largely derived from the Roman and Canon Law, has led to the introduction in this edition of a new feature—the references to the early jurists laying down and illustrating these maxims and definitions, as well as to such points in the dissertations of the more modern jurists as may be consulted with advantage. In making frequent references to these authorities there has been no relaxation of the vigilant scrutiny and careful analysis due to the adjudications of the Anglo-American Courts. So far from this being the case, there is not a citation in the former texts which has not for this edition been verified, and, as far as known, there is not a single intermediate reported English or American criminal decision that has not been scrutinized and introduced. Nor is this all. The student will see by comparison that the text has been so subdivided that each point is now presented in its own separate analytical place. That the labour thus applied is made only the more fruitful by the introduction of cognate foreign jurisprudences, will be conceded by all who will examine the sections devoted to Presumptions, to Casual Connection, to Estoppel by Consent, to Omissions, to Conflict of Jurisdictions, to Conspiracy, and to Attempts. The treatise now covers the whole field of Criminal Jurisprudence, and is commended with confidence to those engaged in the application of our criminal law, whether as practitioners or judges.

Third Edition, 1873, two volumes in three, price 5*l.* 15*s.* 6*d.*, law calf,

### WHARTON AND STILLÉ'S MEDICAL JURISPRUDENCE.

The first volume containing a Treatise on Mental Unsoundness, embracing a general view of Psychological Law, by FRANCIS WHARTON, LL.D. The second in two parts, embracing the topics of Fœtus and New Born Child, and Difference of Sex, by SAMUEL ASHHURST, M.D., of Philadelphia; Poisons, by ROBERT AMORY, M.D., of Brookline, Mass.; Wounds and Signs of Death, by WHARTON SINKLER, M.D., of Philadelphia; Psychological and Legal Notes, by FRANCIS WHARTON, LL.D.

"So far as we can judge, the work constitutes a most complete and valuable encyclopædia of medical jurisprudence."—*Solicitors' Journal.*

In royal 8vo., 1872, price 36*s.*, cloth,

### CONFLICT OF LAWS; OR, PRIVATE INTERNATIONAL LAW.

Including a Comparative View of Anglo-American, Roman, German, and French Jurisprudence. By FRANCIS WHARTON, LL.D.

### WHITING (W.).

### WAR POWERS UNDER THE CONSTITUTION OF THE UNITED STATES.

With an Appendix of Cases. 8vo. 1871. 21*s.* cloth.

### WOTHERSPOON'S MANUAL OF THE PRACTICE AND PROCEDURE IN THE SEVERAL COURTS HAVING CIVIL JURISDICTION IN THE PROVINCE OF QUEBEC. 12mo. 1870. 12*s.* 6*d.*

\* \* Any Foreign Works not in stock can be supplied (if in print) in a few weeks from date of order.

This day is published, in 8vo., Third Edition, price 5s., cloth,

THE  
MARRIED WOMEN'S PROPERTY ACT, 1870,  
AND THE  
*Married Women's Property Act, 1870,  
Amendment Act, 1874.*

ITS RELATIONS TO THE  
DOCTRINE OF SEPARATE USE.

With Appendix of Statutes, Cases and Forms.

BY  
J. R. GRIFFITH, B.A. OXON,  
OF LINCOLN'S INN, BARRISTER-AT-LAW.

In post 8vo., 1874, Fourth Edition, price 15s., cloth,

INTRODUCTION  
TO  
THE STUDY OF INTERNATIONAL LAW,  
DESIGNED AS AN AID IN TEACHING, AND IN HISTORICAL STUDIES.  
By THEODORE D. WOOLSEY, late President of Yale College.

Fourth Edition, revised and enlarged.

"The fact that President Woolsey's treatise on International Law has already reached a fourth edition may be taken as evidence of the increasing attention now paid to the subject of which it treats by all who lay claim to a liberal education in the United States. Certainly the long controversy maintained with this country in regard to the recognition of Confederate belligerency and the depredations of the 'Alabama' and its sister cruisers proves that no people stands more in need of enlightenment on the subject. The first edition of President Woolsey's work appeared in 1860; the second, considerably enlarged, four years later;

and the third, with further valuable additions, in 1871. The fourth edition which now appears likewise contains various additions. The work is intended for students rather than lawyers, the author having undertaken its preparation while lecturing on International Law and History at Yale College. To the original historical sketch of the subject, corrected and enlarged, Dr. Woolsey has added, in the form of a second appendix, a pretty full summary of the various treaties which form the landmarks of international jurisprudence, and in the notes newly introduced he has brought down the discussion to the present time."—*Saturday Review*.

In 8vo., 1872, price 7s. 6d., cloth,

AN EPITOME AND ANALYSIS OF SAVIGNY'S TREATISE ON  
OBLIGATIONS IN ROMAN LAW.

By ARCHIBALD BROWN, M.A. Edin. and Oxon. and B.C.L. Oxon., of the Middle Temple, Barrister-at-Law.

"Mr. Archibald Brown deserves the thanks of all interested in the science of law, whether as a study or a practice, for his edition of Herr von Savigny's great work on 'Obligations.' Mr. Brown has undertaken a double task—the translation of his author, and the analysis of his author's matter. That he has succeeded in reducing the bulk of the original will be seen at a glance; the French translation consisting of two volumes, with some five hundred pages apiece, as compared with Mr. Brown's thin volume of a hundred and

fifty pages. At the same time the pith of Von Savigny's matter seems to be very successfully preserved, nothing which might be useful to the English reader being apparently omitted.

"The new edition of Savigny will, we hope, be extensively read and referred to by English lawyers. If it is not, it will not be the fault of the translator and epitomiser. Far less will it be the fault of Savigny himself, whose clear definitions and accurate tests are of great use to the legal practitioner."—*Law Journal*.



## THE LAW OF EXTRADITION.

Just published, Second Edition, in 8vo., price 18s., cloth,

A TREATISE UPON  
THE LAW OF EXTRADITION  
WITH THE  
CONVENTIONS UPON THE SUBJECT EXISTING BETWEEN  
ENGLAND AND FOREIGN NATIONS,  
AND  
THE CASES DECIDED THEREON.

By EDWARD CLARKE,

OF LINCOLN'S INN, BARRISTER-AT-LAW, AND LATE TANCRED STUDENT.

"Mr. Clarke's accurate and sensible book is the best authority to which the English reader can turn upon the subject of Extradition."—*Saturday Review*.

"The opinion we expressed of the merits of this work when it first appeared has fully justified by the reputation it has gained. This new edition, embodying and plaining the recent legislation on extradition, is likely to sustain that reputation. . . . There are other points we had marked for comment, but we must content ourselves heartily commending this new edition to the attention of the profession. It is seldom come across a book possessing so much interest to the general reader and at the same time furnishing so useful a guide to the lawyer."—*The Solicitors' Journal*.

"The appearance of a second edition of this treatise does not surprise us. It is a useful book, well arranged and well written. A student who wants to learn the principles and practice of the law of extradition will be greatly helped by Mr. Clarke. Lawyers who have extradition business will find this volume an excellent book of reference. Magistrates who have to administer the extradition law will be greatly assisted by a careful perusal of 'Clarke upon Extradition.' This may be called a warm commendation, but those who have read the book will not say it is unmerited. We have so often to expose the false pretenders to legal authorship that it is a pleasure to meet with a volume that is the useful and unpretending result of honest work. Besides the Appendix which contains the extradition conventions of this country since 1843, we have six chapters. The first is 'Upon the Duty of Extradition;' the second on the 'Treaties and Cases;' the others on the law in the United States, Canada, England and France, and the practice in those countries."—*The Law Journal*.

"One of the most interesting and valuable contributions to legal literature which has been our province to notice for a long time, is 'Clarke's Treatise on the Law of Extradition.' . . . . Mr. Clarke's work comprises chapters upon the Duty of Extradition; Early Treaties and Cases; History of the Law in the United States, Canada, in England, in France, &c., with an Appendix containing the Conventions existing between England and Foreign Nations, and the Cases decided thereon. . . . The work is ably prepared throughout, and should form a part of the library of every lawyer interested in great Constitutional or International Questions."—*Albany Journal*.

THE TIMES of September 7, 1874, in a long article upon "Extradition Treaties," makes considerable use of this work, and writes of it as "Mr. Clarke's useful work on Extradition."



This day is published, in 8vo., price 6s., cloth,

# THE LAW

CONCERNING THE

# REGISTRATION OF BIRTHS AND DEATHS

IN

ENGLAND AND WALES,

AND

AT SEA.

*Being the whole Statute Law upon the subject; together with a list of Registration Fees and Charges,*

EDITED, WITH

Copious Explanatory Notes and References, and an  
Elaborate Index.

BY

ARTHUR JOHN FLAXMAN,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

---

## PRACTICE OF CONVEYANCING.

---

In the Press, in One Volume, 8vo.,

# Title Deeds:

THEIR CUSTODY AND PRODUCTION,

AND OF OTHER DOCUMENTARY EVIDENCE AT LAW,

In Equity and Matters of Conveyancing,

INCLUDING COVENANTS FOR THE PRODUCTION OF DEEDS AND  
ATTESTED COPIES;

*With an Appendix of Precedents, the Vendor and Purchaser Act, 1874,  
&c. &c. &c.*

By WALTER ARTHUR COPINGER,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW;

author of "The Law of Copyright" and "Index to Precedents in Conveyancing."

*Now Ready, in One thick Volume, 8vo., of nearly One Thousand Pages,  
price 42s., strongly bound in Cloth,*

# A MAGISTERIAL & POLICE GUIDE

Being the Statute Law,

*INCLUDING THE SESSION OF 1874,*

WITH NOTES AND REFERENCES TO THE MOST RECENTLY DECIDED CASES,

RELATING TO THE

PROCEDURE, JURISDICTION, AND DUTIES OF MAGISTRATES  
AND POLICE AUTHORITIES,

*IN THE METROPOLIS AND IN THE COUNTRY.*

With an Introduction showing the General Procedure before Magistrates  
both in Indictable and Summary Matters.

BY

HENRY C. GREENWOOD,

*Stipendiary Magistrate for the District of the Staffordshire Potteries,*

AND

TEMPLE C. MARTIN,

*Of the Southwark Police Court.*

"The law relating to magistrates is a very important part of our jurisprudence, and upon the skill with which the statute and case law is expounded by text writers depends in a great measure the successful administration of the criminal law. The fact that Mr. Greenwood, evidently ably assisted by Mr. Martin, should have entered a field already occupied by Oke and Burn, the latter work having been recently edited with most elaborate care by high authorities, would appear to show that magistrates are not altogether satisfied with the way in which the subject of the jurisdiction of magistrates, and police law generally, has been dealt with. And we notice that our authors do not confine themselves to the duties of magistrates only, particular attention, we are told in the preface, having been paid to the duties of constables.

"For the form of the work we have nothing but commendation. The subjects are treated in alphabetical order—obviously the simplest and most intelligible form for a treatise on law where the subject is plainly divisible and capable of classification. The subjects thus classified are preceded by a valuable introduction commencing with the jurisdiction of magistrates in indictable offences, which is followed by a dissertation upon their jurisdiction in summary matters. As illustrating the desire of our authors to attain to lucidity, we may refer to the first page of this introduction, which opens thus:—

"Before proceeding in any matter the justice should inquire:—

'1st. Whether he has jurisdiction.

'2nd. If more than one or any particular description of justice is required.

'3rd. Whether a time is limited for any of the proceedings.

'4th. What are his powers by the commission of the peace or by statute.'

"Under each head a short explanation is given, and the writers, whose qualifications for the task no one can question, proceed to treat of jurisdiction under 11 & 12 Vict. c. 42, ss. 2, 3, 5, 6, and 7. This brings us to the mode in which statute law has been treated, and to explain this we turn to the preface, where we are told that the form of the statutes has been as little interfered with as possible; but the sections which relate to procedure and other matters

of that nature have been collected into foot notes and referred to as required. By this arrangement the text has been confined almost entirely to sections creating offences, &c.

"Having given this description of the plan of the treatise it only remains for us to observe upon execution of the design. It is perfectly plain that a vast amount of labour and intelligence has been expended with the conscientious desire to produce a reliable guide. The foot notes, to which observations, directions, subordinate sections of Acts of Parliament and cases are relegated, contain all the information necessary to elucidate the text, which we have said, is wholly statute law. The part of the work entitled 'Intoxicating Liquors' is excellent and at the same time a very concise treatise on the licensing law, and we should imagine we prove of great use to magistrates and their clerks. In the text we have the statutes unencumbered with individual criticism, and the notes, whilst of important, illustrative, and explanatory matter are concise, the effect of decisions being shortly stated, no effort being made by the authors to indulge in unnecessary writing, so frequently the habit of authors and publishers.

"In short, we may say we have here our law book. It is at once in itself an index and a digest. We have long been of opinion that in order to simplify English law it must first be arranged in order, alphabetical or otherwise, letting the Legislature speak where it makes the law, and citing recognised authorities clearly and without comment where the law is to be found only in text-books. Messrs. Greenwood and Martin have produced a work which is of moderate dimensions, price, whilst from our examination of it we believe it may be said to omit nothing which it ought to contain. Without wishing to disparage any existing text-book, we believe this before us will prove more practical use as being better arranged, either Oke or Burn. Those are very valuable works and will always retain their place in favour, but we think Messrs. Greenwood and Martin will find hearty welcome wherever magistrates desire to be informed by easy reference of the nature and extent of their jurisdiction and powers."—*Law Times*



STEVENS AND HAYNES' PUBLICATIONS.

THE LAW OF CORPORATIONS.

*This day is published, in one volume, demy 8vo, price 21s. cloth,*

A TREATISE ON THE DOCTRINE OF ULTRA VIR  
BEING AN INVESTIGATION OF THE PRINCIPLES WHICH LIMIT  
CAPACITIES, POWERS, AND LIABILITIES OF CORPORATIONS, AND  
MORE ESPECIALLY OF JOINT-STOCK COMPANIES.

By SEWARD BRICE, M.A., LL.D., London, of the Inner Temple, Barrister-at-Law.

*Now ready, in one thick volume, 8vo, price 30s. cloth,*

THE LAW AND PRACTICE IN BANKRUPTCY.

Comprising—THE BANKRUPTCY ACT, 1869; THE DEBTORS ACT, 1869; INSOLVENT DEBTORS and BANKRUPTCY REPEAL ACT, 1869, AND SUBSEQUENT ACTS; together with the General Rules and Orders in Bankruptcy and at Common Law. With the Practice on Procedure. Copious Notes, References, and a very Elaborate and Exhaustive Index. Second Edition, greatly enlarged, with numerous additional Cases, Statutes, Forms, &c. &c. By HENRY PHILIP ROBERTSON, of Lincoln's Inn, and WILLIAM HAZLITT, of the Middle Temple, Barristers-at-Law, Registrars of the Court of Bankruptcy.

*Second Edition, crown 8vo, price 20s. cloth.*

THE PROBATE, LEGACY, AND SUCCESSION DUTY

ACTS: Comprising 36 Geo. 3, c. 52; 45 Geo. 3, c. 23; 55 Geo. 3, c. 184; and 17 Vict. c. 51; with an Introduction and copious Notes; together with an Abstract of Statutes, Forms, Tables of Duties, and a full Index. By ALFRED HANSON, Comptroller of Legacy and Succession Duties.

"It is the only complete book upon a subject of great importance."—*Law Times*.

"His book is a most useful one to all practitioners, whether barristers or solicitors."—*Solicitors' Journal*.

*In 8vo, price 9s. cloth,*

THE RULE OF THE LAW OF FIXTURES.

Second Edition, embracing references to English, Scotch, Irish, and American Law. By ARCHIBALD BROWN, of the Middle Temple, Barrister-at-Law.

*In 8vo, price 7s. 6d. cloth,*

AN EPITOME AND ANALYSIS OF SAVIGNY'S  
TREATISE ON OBLIGATIONS IN ROMAN LAW. By ARCHIBALD BROWN, of the Middle Temple, Barrister-at-Law.

*In 8vo, price 5s. cloth,*

THE LAW OF NEGLIGENCE,

INCORPORATING the RECENT DECISIONS of the COURTS OF THE KINGDOM and AMERICA. By ROBERT CAMPBELL, Advocate of the Scotch Law, and of Lincoln's Inn, Barrister-at-Law.

*In one volume, 8vo, price 18s. cloth lettered,*

THE LAW OF COPYRIGHT,

IN WORKS OF LITERATURE AND ART: including that of the Drama, Music, Engraving, Sculpture, Painting, and Photography, and Ornamental and Useful Arts, together with International and Foreign Copyright, with the Statutes relating thereto, and References to the English and American Decisions. By WALTER COPINGER, of the Middle Temple, Barrister-at-Law.

*In one vol., royal 8vo. 1869. Price 30s. cloth,*

CASES AND OPINIONS ON CONSTITUTIONAL

And various points of ENGLISH JURISPRUDENCE, collected and digested from Documents and other Sources, with NOTES. By WILLIAM FORSYTH, M.A., formerly Standing Counsel to the Secretary of State in Council of India, late Fellow of Trinity College, Cambridge.

6341CD

LBC

05-02-06 32180

391

MS





Princeton Theological Seminary Libraries



1 1012 01312 8816





